Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 772

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED MARCH 24, 1939.

CERTIORARI GRANTED MARCH 27, 1939.

No. 865

E. FRANK BRANON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED APRIL 12, 1939.

CERTIORARI GRANTED APRIL 17, 1939.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445.

H. P. HOOD & SONS, Inc., ET AL.,

DEFENDANTS, APPELLANTS,

v.

UNITED STATES OF AMERICA ET AL.,

PLAINTIFFS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, FROM FINAL DECREE (SWEENEY, J.), MARCH 9, 1939.

TRANSCRIPT OF RECORD.

VOLUME 1.

PLEADINGS.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
EDWARD L. MERRILL,
MERRILL & MERRILL,
for Appellants.

HUGH B. COX,
JAMES C. WILSON,
SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL,
for Appellees.

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VOLUME I.; PLEADINGS.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445.

H. P. HOOD & SONS, INC., ET AL.,
DEFENDANTS, APPELLANTS,

v.

UNITED STATES OF AMERICA ET AL.,
PLAINTIFFS, APPELLEES.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

No. 4519, EQUITY DOCKET.

UNITED STATES OF AMERICA AND HENRY A. WALLACE,
SECRETARY OF AGRICULTURE, PLAINTIFFS,

v.

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY
(SUBSTITUTED FOR NOBLE'S MILK, INC.), DEFENDANTS.

The bill of complaint in this cause was filed in the clerk's office on the first day of October, A. D. 1937, and was duly entered at September Term of this court, A. D. 1937.

Upon the filing of the bill of complaint, an order to show cause was issued being made returnable on the twenty-ninth day of October, A. D. 1937, or ten o'clock A. M.

At the same term to wit, October 21, 1937, a plaintiff's motion to amend the bill of complaint by striking the name of Noble's Milk, Inc., from the bill and substituting in place thereof the name "Noble's Milk Company" is filed.

Said motion was allowed by the court on the same day, the Honor

able George C. Sweeney, District Judge, sitting, and the following First Amended Bill of Complaint was filed:

FIRST AMENDED BILL OF COMPLAINT.

[Filed October 21, 1937.]

Plaintiffs, by Francis J. W. Ford, United States Attorney, in and for the District of Massachusetts, acting under the direction of the Attorney General, at the request of the Secretary of Agriculture, bring this first amended bill of complaint and allege:

1. Plaintiff Henry A. Wallace is the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary") and joins in this action in the discharge of his official duties and in the public interest.

2. The defendant H. P. Hood & Sons, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth.

2*a*. The defendant Noble's Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 500 Rutherford Avenue in the city of Boston in said Commonwealth. The plaintiffs are informed and believe that the defendant Noble's Milk Company is a subsidiary of, and is controlled and dominated by, defendant H. P. Hood & Sons, Inc.

3. This proceeding is brought under Section 8a (6) of the Act of May 12, 1933 (48 Stat. 31; 7 U.S.C.A., Section 6078a (6), as amended August 24, 1935 (49 Stat. 672), and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress) (the said Act of May 12, 1933, as reenacted and amended being hereinafter referred to as the "Act"), investing the several district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order issued by the Secretary pursuant to the provisions of Title I of said Act. A copy of the pertinent provisions of the Act, marked "Exhibit A", is attached hereto and made a part hereof.

4. Pursuant to the provisions of Sections 8b and 8c (3) of the Act, the Secretary, on November 30, 1935, gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the area which includes the territory within the boundary lines of the cities and towns of Arlington, Belmont Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, all in the Commonwealth of Massachusetts (the said area being hereinafter referred to as the Boston Area).

5. In accordance with the terms of the said notice, a public hearing was held on December 10 and 11, 1935, at St. Johnsbury, Vermont, and on December 12, 1935, at Boston, Massachusetts, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order. The said hearing was attended by representatives of producers, handlers, and consumers of milk sold in the Boston Area.

6. Upon evidence adduced at the said hearing the Secretary of Agriculture made all of the findings required by the applicable provisions of the Act and, the President having approved the findings made by the Secretary pursuant to the provisions of Section 8c (9) of the Act, the Secretary, in accordance with the provisions of Section 8c (1) (2), (4), and (9) of the Act, issued Order No. 4 regulating the handling of milk in the Boston Area, effective February 9, 1936, the said order containing terms and conditions authorized by the applicable provisions of the Act and no others. A copy of the said order, marked "Exhibit B", is attached hereto and made a part hereof.

7. The purpose of said Order No. 4 is to promote, foster, and protect commerce in milk among the states and to effectuate the declared policy of the Act by establishing and maintaining such orderly marketing conditions as will reestablish prices to be paid to producers of milk and cream for the Boston Area at a level which will give those products a purchasing power with respect to articles that

producers buy equivalent to the purchasing power of those commodities during the base period fixed by the order.

8. The said Order No. 4 was approved and favored by more than 75 percent of the producers who, during the representative month of November 1935, had been engaged in the production of milk for sale in the Boston Area.

9. The said Order No. 4 was continuously in effect from the effective date thereof until August 1, 1936, when the Secretary pursuant to authority vested in him by the provisions of the Act and the applicable general regulations thereunder, suspended the further operation of the said order. A copy of the order suspending the said Order No. 4 is attached hereto, marked "Exhibit C", and made a part hereof.

10. On June 25, 1937, the Acting Secretary of Agriculture, pursuant to the authority vested in him by the provisions of the Act and the applicable general regulations thereunder, terminated the said order of suspension, effective July 1, 1937, relative to the following provisions of said Order No. 4: Article I, Article II, Article III, Article V, Article VI—Section 1, Article XII, Article XIII, Article XIV, Article XV, Article XVI. A copy of the order terminating the order suspending the said Order No. 4 is attached hereto, marked "Exhibit D", and made a part hereof.

11. On June 24, 1937, the Secretary of Agriculture, pursuant to Sections 8c (3) and 8c (17) of the Act, gave notice of a public hearing on a proposed amendment to Order No. 4, and, in accordance with the terms of the said notice, the said public hearing on the proposed amendment to said Order No. 4 was held at St. Johnsbury, Vermont, on June 30, 1937; at Boston, Massachusetts, on July 1, 1937, and at Augusta, Maine, on July 2, 1937, at which places and times all interested parties were afforded an opportunity to be heard on the proposed amendment. The said public hearing was attended by representatives of producers, handlers, and consumers of milk sold in the Boston Area.

12. Upon the evidence adduced at the said hearing, the Secretary made all the findings required by the applicable provisions of the Act, and, in accordance with the provisions of Section 8c (1), (2), (4),

(9), and (17) of the Act, issued an amendment to said Order No. 4, effective August 1, 1937." (The said Order No. 4 and the said amendment are hereinafter collectively referred to as the "Order as amended".) The said amendment contains terms and conditions authorized by the applicable provisions of the Act and no others. A copy of said Order as amended, marked "Exhibit E", is attached hereto and made a part hereof.

"13. The said amendment to Order No. 4 was favored and approved by more than 72 percent of the producers who, during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act.

14. The Order as amended has been continuously in effect from the effective date thereof to and including the date of the filing of this bill of complaint.

15. During the year ending August 28, 1937, approximately 88 percent of the milk and 99.8 percent of the cream used in the Boston Area was imported from other states. During the same period, 54 percent of all the milk brought into the Boston Area originated in Vermont, 15 percent originated in Maine, 10 percent originated in New Hampshire, 8 percent originated in New York, 1 percent originated in Rhode Island. Only 12 percent originated in Massachusetts, of which less than two percent was handled by handlers dealing exclusively in milk produced in Massachusetts. Cream was received in the Boston Area during 1936 from 16 states. Vermont supplied 41 percent of the total quantity; Michigan, 14 percent; New York, 11 percent; only .2 percent originated in Massachusetts.

16. The defendant H. P. Hood & Sons, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk, and is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article I of the Order as amended, and as such is subject to the applicable provisions of the Act and of the Order as amended. The defendant Noble's Milk Company is also engaged in the business of receiving, buying, processing, and selling milk and is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article

I of the Order as amended and as such is subject to the applicable provisions of the Act and of the Order as amended.

17. The defendant H. P. Hood & Sons, Inc. purchases milk from producers located in the States of Maine, New Hampshire, Vermont, and New York; the milk is transported in interstate commerce to the distributing plant of the defendant corporation in Boston, and there is processed and then distributed and sold by the said defendant in the Boston Area. The defendant corporation operates receiving stations at Auburn, West Farmington, Unity, and Belfast, all in the State of Maine; at Colbrook, West Canaan, and Lancaster, all in the State of New Hampshire; at Barnett, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans, and Sheldon Junction, all in the State of Vermont; and at Eagle Bridge and Salem in the State of New York. The defendant corporation also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the said milk in the Boston Area. In the delivery period August 1 to August 15, 1937, the defendant corporation purchased milk from a total of 3186 producers. Of this total, 902 delivered to plants located in the State of Maine; 473 to plants located in the State of New York; 1367 to plants located in the State of Vermont; 371 to plants located in the State of New Hampshire; and 73 to the plant in the Commonwealth of Massachusetts. From time to time the defendant corporation also purchases from other handlers, and distributes and sells in the Boston Area, milk which has been received by the said handlers from producers located outside the Commonwealth of Massachusetts and transported in interstate commerce into the Boston Area. In the delivery period August 1 to August 15, 1937, the defendant handled 10,332,774 pounds of milk in the Boston Area.

The defendant Noble's Milk Company purchases milk from producers located in the State of Vermont; the milk is transported in interstate commerce into the Commonwealth of Massachusetts, where it is sold to the defendant H. P. Hood & Sons, Inc. The said milk is then processed by the defendant H. P. Hood & Sons, Inc. and distributed and sold in the Boston Area. The defendant Noble's Milk Company also purchases milk from producers located in the Com-

monwealth of Massachusetts and sells the said milk to the defendant H. P. Hood & Sons, Inc., which processes the said milk and distributes and sells it in the Boston Area. During the period August 1 to August 15, 1937, the defendant Noble's Milk Company handled 585,724 pounds of milk in the Boston Area.

18. Each of the defendant corporations has been, since the effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, and all of the milk handled by each of the defendant corporations in the Boston Area since the effective date of the Order as amended, has been handled in competition with milk which is purchased outside the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth, and then distributed and sold in the Boston Area. All of the handling of milk in the Boston Area by the defendant corporations is in the current of interstate commerce, as defined in Section 10 (j) of the Act, and directly burdens, obstructs, or affects interstate commerce in milk and its products.

19. Milk is an article of diet which is of great importance to public health, and it is imperative that a reliable and adequate supply of milk be maintained. The consumers in the Boston Area are completely dependent upon milk producers outside of Massachusetts for a steady flow of milk. To assure a continuous reliable supply, milk producers shipping into the Boston Area, numbering approximately 18,000, must be paid fair and reasonable prices for their milk.

20. Maine, New Hampshire, Vermont, and Massachusetts supply practically all of the milk marketed in the Boston Area. Milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont, and Massachusetts. In 1935 the cash farm income from milk sold from farms in Maine represented 24 percent of the total farm cash income; in New Hampshire 44 percent; in Vermont, 67 percent; in Massachusetts, 38 percent.

21. From 1929 to 1933 the prices for wholesale milk received by producers in Vermont, New Hampshire, Maine and Massachusetts declined steadily and substantially. In 1936, when the said Order No. 4 was issued, the farm price for wholesale milk in Vermont was

34 percent below the 1929 level, in New Hampshire 31 percent, in Maine 29 percent, and in Massachusetts 18 percent.

22. In accordance with long established practice in the milk industry in the United States, including the Boston Area, the Order as amended classifies milk according to the use for which the milk is sold and fixes a price for each classification. All milk sold or distributed by handlers as whole milk, chocolate milk, of flavored milk is designated as Class I milk and bears a higher price than milk sold, distributed, or disposed of for other uses, the latter being designated as Class II milk. The Order as amended provides for payments to the producers of milk in substantially the following manner: The aggregate value of all milk delivered to handlers for sale in the Boston Area is calculated on the use basis, that is on the basis of the Class I price for Class I milk and the Class II price for Class II milk. The aggregate amount so calculated is distributed to producers on the basis of a so-called "blended price", which represents a blend of the value of both classes of milk and accordingly is less than the Class I price but more than the Class II price This blended price is paid uniformly to all producers subject to certain location differentials which are set forth in the Order as amended. The handlers are required to add to the blended price the market value of that part of the butterfat content of milk which is in excess of 3.7 percent or are allowed to deduct from the blended price the market value of the amount of butterfat which it would be necessary to add to the milk to give it a butterfat content of 3.7 percent. Under the Order the blended price is a minimum price and handlers are permitted to pay producers more than the blended price.

23. The result of the method of payment described in paragraph 22 above is that a handler with relatively large Class I sales by paying to his producers the blended price pays them a sum which is less than the total use value of the milk handled by him, while a handler with relatively small Class I sales by paying to his producers the blended price pays them more than the use value of the milk handled by him. To adjust the differences, paragraph 3 of Section 1 of Article VIII of the Order as amended provides that the difference between the use value of the milk of each handler and the amount he pays to pro-

ducers be paid to, or received from, the market administrator who acts as agent for this clearing arrangement. This clearing arrangement does not increase or decrease the cost of milk to any handler.

24. By the provisions of said Paragraph 3 of Section 1 of Article VIII of the Order as amended the defendant H. P. Hood & Sons, Inc., is now required and obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of $30,703.03, which said amount is now due and owing; and for the delivery period August 16 to August 31, 1937, the amount of $32,487.42, which said amount is now due and owing. The said defendant has failed and refused to pay the said amount of $30,703.03 and $32,487.42 and has violated and now is violating said Paragraph 3 of Section 1 of Article VIII of the Order as amended. The plaintiffs are informed and believe that the defendant H. P. Hood & Sons, Inc., unless enjoined, will continue to violate said Paragraph 3 of Section 1 of Article VIII by failing and refusing to make the payments to producers as required by the said Paragraph 3 of Section 1 of Article VIII.

25. By the provisions of said Paragraph 3 of Section 1 of Article VIII of the Order as amended the defendant Noble's Milk Company is required and obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of $1,823.81, which said amount is now due and owing, and for the delivery period August 16 to August 31, 1937, the amount of $1,957.34, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of $1,823.81 and $1,957.34 and has violated and now is violating said Paragraph 3 of Section 1 of Article VIII of the Order as amended. The plaintiffs are informed and believe that the said defendant Noble's Milk Company, unless enjoined, will continue to violate said Paragraph 3 of Section 1 of Article VIII by failing and refusing to make the payments to producers as required by the said Paragraph 3 of Section 1 of Article VIII of the Order as amended.

26. Section 1 of Article X of the Order as amended requires each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order as amended

not more than 2 cents per hundredweight on all milk which is delivered to him by producers or produced by him.

27. By the said provisions of Section 1 of Article X of the Order as amended, the defendant H. P. Hood & Sons, Inc. is required and obligated to pay to the market administrator for the delivery period of August 1 to August 15, 1937, the amount of $1,927.50, which said amount is now due and owing, and for the delivery period of August 16 to August 31, 1937, the amount of $2,008.96 which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of $1,927.50 and $2,008.96 and has violated and now is violating said Section 1 of Article X of the Order as amended. The plaintiffs are informed and believe that the said defendant unless enjoined will continue to violate said Section 1 of Article X of the Order as amended, by failing and refusing to make the payments required by the said Section.

28. By the said provisions of Section 1 of Article X of the Order as amended the defendant Noble's Milk Company is now required and obligated to pay the market administrator for the delivery period August 1 to August 15, 1937, the amount of $117.14, which said amount is now due and owing, and for the delivery period August 16 to August 31, 1937, the amount of $120.93, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of $117.14 and $120.93 and has violated and is now violating said Section 1 of Article X of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article X of the Order as amended by failing and refusing to make the payments required by the said Section.

29. Section 1 of Article IX of the Order as amended provides that, except in the case of milk purchased from producers who are members of a cooperative association, each handler shall deduct not more than 2 cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator on or before the twenty-fifth day after the end of such marketing period, to be used by the said market administrator in supplying information and in render-

ing certain valuable services to producers who are not members of a cooperative association.

30. In the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, the defendant H. P. Hood & Sons, Inc. purchased milk from producers who were not members of a cooperative association, and by the said provisions of Section 1 of Article IX of the Order as amended the said defendant is now required and obligated to pay to the market administrator on account of the milk so purchased in the delivery period August 1 to August 15, 1937, the amount of $1,900.13, which said amount is now due and owing, and on account of milk so purchased in the delivery period August 16 to August 31, 1937, the amount of $1,980.67, which said amount is now due and owing. The defendant has failed and refused to pay the said amounts of $1,900.13 and $1,980.67 and has violated and now is violating said Section 1 of Article IX of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article IX of the Order as amended, by failing and refusing to make the payments required by the said Section.

31. During the delivery periods August 1 to 15, 1937, and August 16 to August 31, 1937, the defendant Noble's Milk Company purchased milk from producers who were not members of a cooperative association, and by the said provisions of Section 1 of Article IX of the Order as amended the said defendant is required and obligated to pay to the market administrator on account of the milk so purchased in the delivery period August 1 to 15, 1937, the amount of $117.14, which said amount is now due and owing, and on account of the milk so purchased in the delivery period August 16 to August 31, 1937, the amount of $120.93, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of $117.14 and $120.93 and has violated and now is violating Section 1 of Article IX of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article IX of the Order as amended by failing and refusing to make the payments required by the said section.

32. The accomplishment of the purposes of the Act and of the Order as amended depends upon the effective and orderly administration and enforcement of the Order as amended, and upon compliance with all of the provisions of the Order as amended by all of the handlers of milk subject to the provisions of the Order as amended. The refusal of the defendants to make the payments required by Paragraph 3 of Section 1 of Article VIII and Section 1 of Article X and Section 1 of Article IX of the Order as amended has made impossible the effective and orderly administration and enforcement of the Order as amended, is now making impossible the effective and orderly enforcement of the Order as amended, and, unless enjoined, will continue to make impossible the orderly and effective administration and enforcement of the Order as amended. Unless the defendants are immediately restrained from continuing to violate the Order as amended and are immediately compelled to comply with all of its provisions, other handlers will be encouraged, or compelled by economic necessity, to refuse to comply with the provisions of the Order as amended, the prices received by producers for milk will be lowered, commerce in milk among the several states will be disrupted, burdened, and obstructed, the lawful regulation of such commerce as provided by Congress in the Act and the Order will be ineffective, the declared policy of Congress will be defeated, and the plaintiffs will suffer irreparable injury.

Wherefore, plaintiffs pray:

1. That the court issue a preliminary injunction preventing and restraining the defendant corporations, their agents, officers, attorneys, employees, successors, and assigns from violating any of the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area during the pendency of this suit.

2. That the court issue a preliminary injunction commanding each of the defendant corporations to pay all amounts now due and owing by it under the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area and commanding each of the defendant corporations, its agents, officers, attorneys, employees, successors, and assigns to

comply with all of the provisions of said Order No. 4 as amended during the pendency of this suit.

3. That the court issue a permanent injunction preventing and restraining the defendant corporations, their agents, officers, attorneys, employees, successors, and assigns from violating the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area.

4. That the court issue a permanent injunction commanding the defendant corporations, their agents, officers, attorneys, employees, successors, and assigns, to comply with all provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area.

5. That the plaintiffs be given all other, further, and different relief as to this court may seem just and proper.

FRANCIS J. W. FORD,
United States Attorney.

ROBERT H. JACKSON,
Assistant Attorney General.

WENDELL BERGE,
Special Assistant to the Attorney General.

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON, SS.

Paul L. Miller, being first duly sworn, deposes and says that he is Acting Chief of the Dairy Section, Agricultural Adjustment Administration, Department of Agriculture of the United States; that he makes this affidavit on behalf of the plaintiffs in the foregoing bill of complaint; that he has read the foregoing bill and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

PAUL L. MILLER.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this twentieth day of October, 1937.

ALFRED L. DORF,
Notary Public, District of Columbia.

[SEAL]

[MEMORANDUM. Copy of "Exhibit A" referred to in the foregoing first amended bill of complaint as annexed is here omitted by consent of counsel. Copies of Exhibits "B", "C", "D" and "E", referred to as annexed to the foregoing first amended bill of complaint are here omitted and will be found printed on pages 9, 36, 40 and 59 respectively in Volume II of this Transcript of record. JAMES S. ALLEN, *Clerk.*]

At the same term, to wit, October 29, 1937, on the return day of the summons to show cause, said cause was set down for hearing and was heard by the court on the prayer for preliminary injunction, together with affidavits, the Honorable George C. Sweeney, District Judge, sitting, and was thence taken under advisement.

Also at the same term, to wit, October 29, 1937, the following Petition of E. Frank Branon for Leave to Intervene was filed:

PETITION OF E. FRANK BRANON FOR LEAVE TO INTERVENE AS PARTY DEFENDANT.

[Filed October 29, 1937.]

Your petitioner E. Frank Branon respectfully alleges and represents as follows:

1. Your petitioner is a resident of the State of Vermont.

He is now and was, on August 1, 1937, and for a long time prior thereto, a regular producer of milk eligible to ship milk to the Greater Boston Massachusetts Marketing Area. As such producer, he sold and delivered milk to H. P. Hood & Sons, Inc., one of the defendants in the above-entitled case, during the delivery period August 1 to August 15, 1937, the delivery period August 16 to August 31, 1937, the delivery period September 1 to September 15, 1937, the delivery period September 16 to September 30, 1937, and the delivery period October 1 to October 15, 1937. Since October 15, 1937, he has and is now continuing to sell and deliver milk to H. P. Hood & Sons, Inc.

2. The above-entitled cause was commenced in this court by the filing of a bill of complaint against the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company on October 1, 1937. Said bill of complaint is brought to enforce, and to prevent and restrain

the defendants from violating the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area. Among other things, it seeks a preliminary injunction commanding the defendants to pay all amounts now due and owing by each of them under the provisions of said Order, and permanent injunctions restraining each of them from violating any of the provisions of said Order and commanding them to comply with all of said provisions.

3. Your petitioner has an interest in the litigation in the above-entitled case both against the plaintiffs therein and against the defendant H. P. Hood & Sons, Inc., arising out of the following facts:

For the respective delivery periods from August 1, 1937, to October 15, 1937 inclusive, all sales of milk to the defendant H. P. Hood & Sons, Inc. by all milk producers, including your petitioner, were made in accordance with the terms and conditions expressed in a Plant Notice signed by the defendant H. P. Hood & Sons, Inc., which constituted the contract of sale and purchase under which such producers, including your petitioner, sold their milk to the defendant, H. P. Hood & Sons, Inc., and under which said defendant, H. P. Hood & Sons, Inc., purchased the same from such producers, including your petitioner. Under the terms of said Plant Notice, the defendant, H. P. Hood & Sons, Inc., agreed to pay for all milk delivered by individuals to its plants a fixed sum per hundredweight but in no event less than the prices fixed in Order No. 4 as amended, equalized among producers selling and delivering milk to H. P. Hood & Sons, Inc., that is, in no event less than a sum computed by dividing the total value of milk purchased by the defendant H. P. Hood & Sons, Inc., on the basis of prices for Class I and Class II milk fixed in Order No. 4, as amended, among producers selling and delivering to the defendant H. P. Hood & Sons, Inc., in proportion to the total deliveries made by each such producer subject to certain differentials. A copy of the Plant Notice for the delivery period August 1 to August 15, is attached hereto, marked "Exhibit A", and made a part hereof. The Plant Notice for the delivery periods August 15 to August 31, September 1 to September 15, September 15 to September 30, and October 1 to October 15, respectively, are identical

in all respects with the Plant Notice for the delivery period August 1 to August 15, Exhibit A, except as to the fixed price per hundredweight contained therein, and except for the dates of the delivery period during which such price was to be paid. In each delivery period from August 1 to October 15, inclusive, the fixed price per hundredweight contained in the Plant Notice for the period was in excess of the so-called "blended price" computed and announced by the Market Administrator for the Greater Boston, Massachusetts, Marketing Area under the provisions of Order No. 4 as amended, for the same period. And in each such delivery period, the minimum which H. P. Hood & Sons, Inc. agreed to pay, that is, a sum computed on the basis of the Class I and Class II prices fixed in said Order equalized among the producers selling and delivering to the defendant H. P. Hood & Sons, Inc., was in excess of the so-called "blended price" computed and announced by the market administrator as aforesaid for the same period.

The Plant Notice for each such delivery period provides, however, that from the guaranteed minimum price contained in the notice, the defendant H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal market administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order No. 4, as amended, in respect of milk delivered in said period.

In accordance, as it claims, with the terms of its agreement contained in said Plant Notices, the defendant H. P. Hood & Sons, Inc. has not paid to your petitioner for the respective delivery periods from August 1 to October 15 inclusive the guaranteed minimum price set out in the Plant Notices but has deducted from said guaranteed price a sum which it claims is the proportionate part of the sum demanded from it by the market administrator under the terms and provisions of said Order No. 4, as amended. Your petitioner is informed and believes, and therefore avers that the defendant H. P. Hood & Sons, Inc. has made similar deductions for each such delivery period in respect to all other producers who have sold and delivered to it during each such period.

Your petitioner contends that under the terms of the aforesaid Plant Notices, he is legally entitled to the price therein guaranteed and that the defendant H. P. Hood & Sons, Inc. cannot legally be required to pay any sums so deducted by it to the market administrator because the so-called "blended price" was not computed in accordance with the terms and provisions of Order No. 4, as amended, because Order No. 4, as amended, is wholly null and void and does not have the force of law and because the Act of Congress of May 12, 1933 (48 Stat. 31, U.S.C. Title 7, Section 608 (c)) as amended August 24, 1935 (49 Stat. 672) and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress), under and by virtue of which the plaintiff, the Secretary of Agriculture of the United States, assumed to issue said Order No. 4, as amended, is wholly null and void and beyond the powers conferred on Congress by the Constitution of the United States. The defendant H. P. Hood & Sons, Inc. has not yet paid to the market administrator the sums so deducted from the price guaranteed in the aforesaid plant notices. In the above-entitled suit, the plaintiffs seek an order compelling the defendant H. P. Hood & Sons, Inc. to pay all amounts allegedly due from it under the terms and provisions of Order No. 4, as amended. If the defendant H. P. Hood & Sons, Inc. makes such payment or is ordered to do so, your petitioner will have no method of recovering from the market administrator, the plaintiffs or the defendant H. P. Hood & Sons, Inc. the sums so deducted from the guaranteed price which are due and owing to your petitioner. The intervention of your petitioner in this cause is necessary to the protection of his interest under his contracts of sale with the defendant H. P. Hood & Sons, Inc.

4. In addition to his interest in protecting his right under the plant notices to the total difference between the guaranteed minimum price contained in said notices and the so-called "blended price", your petitioner has an additional interest in the litigation in the above-entitled suit arising out of the following facts:

Section 1 of Article IX of Order No. 4, as amended, provides that, except in the case of milk purchased from producers who are members of a cooperative association as defined in Section 2 of said Article IX,

each handler shall deduct an amount not exceeding two cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator. Your petitioner is not a member of a cooperative association defined as aforesaid. The defendant, H. P. Hood & Sons, Inc., in making payments to your petitioner for milk purchased in each delivery period from August 1 to October 15 inclusive, has deducted from the amounts payable to your petitioner the sum of two cents per hundredweight on all milk so purchased from your petitioner. Your petitioner is informed and believes and, therefore, avers that so long as Order No. 4, as amended, remains in force, and your petitioner is not a member of such a cooperative association, the defendant H. P. Hood & Sons, Inc. will continue to deduct such sum from all amounts due your petitioner for milk hereafter purchased by H. P. Hood & Sons, Inc. from your petitioner. Your petitioner contends that such deductions are and will continue to be unlawful for the reasons set out in paragraph 3 hereof. If the defendant, H. P. Hood & Sons, Inc., is ordered to pay over to the market administrator such sums already deducted and to comply with the terms of Order No. 4, as amended, in the future, your petitioner will be deprived of the sum of two cents per hundredweight on all milk sold by your petitioner to the defendant H. P. Hood & Sons, Inc. during each delivery period from August 1 to October 15, inclusive, and on all milk that your petitioner may sell to the defendant H. P. Hood & Sons, Inc. hereafter, to which sums he is lawfully entitled. He will be unable to recover such sums from the market administrator, the plaintiffs in the above-entitled suit, or from the defendant H. P. Hood & Sons, Inc. The intervention of your petitioner in the above-entitled suit is necessary to protect his interests in receiving the full payment for all milk sold by him to the defendant H. P. Hood & Sons, Inc. without the unlawful deduction of two cents per hundredweight.

5. Your petitioner has a further interest in the litigation in the above-entitled suit arising out of the following facts:

Your petitioner has sold and delivered milk to the defendant H. P. Hood & Sons, Inc. for a period of many years prior to August 1,

1937; since that date he has been and is now continuing to sell and deliver milk to said defendant; and he has every reasonable expectation of continuing his present business relations with said defendant and of selling and delivering milk to said defendant in the future. The effect of Order No. 4, as amended, has been and now is to reduce and lower the price which your petitioner can obtain for milk sold by him to said defendant, and if said Order is enforced against said defendant in the future, the price which your petitioner will be able to obtain for milk sold to said defendant will continue to be so reduced and lowered. Your petitioner is informed and believes and, therefore, avers that for many years the proportion of Class I milk purchased by the defendant, H. P. Hood & Sons, Inc. to the total milk purchased by it has been greatly in excess of the proportion of Class I milk purchased by all handlers in the Greater Boston, Massachusetts, Marketing Area to the total milk purchased by all such handlers and that the defendant, H. P. Hood & Sons, Inc., has similarly purchased a higher percentage of Class I milk during each delivery period from August 1, 1937, to October 15, 1937. The "blended price", computed and announced by the market administrator under the terms of Order No. 4, as amended, is based on the prices for Class I and Class II sales equalized among all producers selling to all handlers in said marketing area. If your petitioner were paid on the basis of Class I and Class II prices equalized among all producers selling to the defendant, H. P. Hood & Sons, Inc., he would receive a higher price for his milk than if he is paid on the basis of such prices equalized among all producers selling to all handlers in said marketing area. Except for intervals when the defendant, H. P. Hood & Sons, Inc., was required to purchase milk on the basis of prices determined by market-wide equalization, either under Federal licenses or orders, or due to the insistence of cooperative associations controlling practically all its supply of milk, it has in the past consistently paid prices to your petitioner substantially in excess of the prices determined by market-wide equalization. Your petitioner is informed and believes and therefore avers that the defendant, H. P. Hood & Sons, Inc., would continue its consistent policy of paying said higher prices but for the provisions of Order No. 4, as amended,

requiring the defendant to make payments to the market administrator. As set out in paragraph 3 hereof, your petitioner contends that the provisions of Order No. 4, as amended, are without authority of law and are null and void. Your petitioner has an interest in contesting the enforcement of said Order as against the defendant H. P. Hood & Sons, Inc. in that it has and will continue to reduce and lower the price which your petitioner receives for milk sold to said defendant and will impair the advantageous business relations obtaining between your petitioner and said defendant. The intervention of your petitioner in the above-entitled suit is the only method whereby your petitioner can protect that interest.

Wherefore, your petitioner prays that an order may be entered permitting him to intervene in the above-entitled cause as a defendant with leave to file his proposed answer, a copy of which is attached hereto, marked "Exhibit B", and for such further and other relief in the premises as to this court may seem just and fit.

E. FRANK BRANON.

MERRILL AND MERRILL,
Solicitors for the Petitioner.

UNITED STATES OF AMERICA.

DISTRICT OF FRANKLIN, VERMONT,
COUNTY OF FRANKLIN, SS.

Then personally appeared E. Frank Branon, the petitioner in the foregoing petition, and made oath that he has read the foregoing petition and knows the contents thereof and that the same are true as of his own knowledge except the matters stated to be on information and belief and that, as to those matters, he believes them to be true.

Subscribed and sworn to before me.

WILMA S. WILLIAMS,
Notary Public.

Allowed 12-30-37.
GEO. C. SWEENEY.

EXHIBIT A.

PLANT NOTICE

To Hood Producers Delivering to This Station:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1. Following our custom of some months past, we are quoting a price for August milk subject to such adjustments as the order may require.

H. P. Hood & Sons, Inc. will pay for the first half of August, 1937 for all milk delivered by individual producers to its plants, not less than $2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price of $2.40 per cwt. net, H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer shall be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratable among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this p[illegible]at.

The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & SONS, INC.

August 1, 1937.

EXHIBIT A.

PLANT NOTICE

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basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratable among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & SONS, INC.

August 1, 1937.

Also at the same term, the following Answers were filed:

ANSWER OF DEFENDANT H. P. HOOD & SONS, INC.

[Filed November 3, 1937.]

Now comes the defendant H. P. Hood & Sons, Inc. and in answer to the plaintiffs' bill of complaint, says:

1. The defendant admits that the plaintiff Henry A. Wallace is the Secretary of Agriculture of the United States, but is without knowledge as to his motive for joining in this suit and neither admits nor denies these allegations but leaves the plaintiffs to their proof.

2. The defendant admits that it is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and that it has its principal place of business at 500 Rutherford Avenue, Boston, in said Commonwealth.

2a. The defendant H. P. Hood & Sons, Inc. does not answer the first sentence in paragraph 2a, that allegation being directed to the

defendant Noble's Milk, Company. The defendant H. P. Hood & Sons, Inc. admits that Noble's Milk Company is a subsidiary of H. P. Hood & Sons, Inc., and that the corporations are operated under the same general policies.

3. The defendant admits that the bill of complaint is brought pursuant to authority purported ot be given by the section of the Act referred to in paragraph 3 of the bill of complaint; but the defendant denies the constitutionality of the Act and the validity of the Order of the Secretary as hereinafter more specifically set forth.

4. The defendant is ignorant as to whether the statements contained in paragraphs 4, 5 and 6 of the bill of complaint are true, and neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

5. The defendant is ignorant of the purposes of Order No. 4, but states that if its purposes are as set forth in paragraph 7 of the bill of complaint, said Order fails to accomplish such purposes in that it tends to depress the purchasing power of farmers who, by reason of geographical location and otherwise are legitimately entitled to share in the fluid milk market in the Marketing Area. Except for the relatively ineffectual limitation embodied in Paragraph 2 of Section 1 of Article VIII, the Order contemplates no limit upon the quantity of surplus milk that may be included in the market pool. There is no definition of, or limitation upon the production area covered by the Order, and new producers, as well as those who are not economically justified in seeking to ship their milk into the Marketing Area, are given an unfair equality with producers having established outlets.

6. The defendant is ignorant as to whether the allegations contained in paragraph 8 of the bill of complaint are true and is therefore unable either to admit or deny said allegations but leaves the plaintiffs to their proofs thereof.

7. The defendant in answer to the allegation of fact contained in paragraph 9 of the bill of complaint says that from February 9, 1936, until August 1, 1936, Order No. 4 was treated by the Secretary of Agriculture as being continuously in effect, but a large number

of producers and a large number of handlers considered themselves not bound thereby and did not comply therewith; that as of August 1, 1936, the Secretary of Agriculture suspended said Order No. 4.

8. The defendant admits that on June 25, 1937, the acting Secretary of Agriculture purported to terminate the order of suspension effective July 1, 1937, relative to Article 1, Article 2, Article 3, Article 5, Article 6—Sec. 1, Article 12, Article 13, Article 14, Article 15, Article 16, but denies that the Secretary of Agriculture did so pursuant to the authority vested in him by the provisions of the Act or the applicable general regulations thereunder.

And further answering the allegations of paragraph 10 of said bill of complaint, the defendant says:

The authority conferred upon the Secretary of Agriculture by Section 8c (16) (A) of the statute to suspend the operation of orders necessarily implies suspension for a limited period of time. During the period of over ten months between the date of suspension and the date of alleged reinstatement, Order No. 4 was in reality abandoned, as clearly appears from the fact that on June 19, 1937, the Secretary promulgated a proposal for an entirely new order without reference to Order No. 4. During said period no attempt was made to enforce Order No. 4, and changes in the marketing conditions in the marketing area, due to the refusal of certain large associations of producers to sell to the defendant and certain other large handlers, rendered said Order inappropriate to effect the purposes of the statute.

Moreover, although the hearings held in the latter part of June and early July purported to be based upon a proposal to amend Order No. 4, the notice to producers of a referendum to be held on July 17, 1937, and the ballots submitted to producers in said referendum (copies of which are annexed hereto as Exhibits A and B respectively) indicated clearly that the provisions of Order No. 4 which the Secretary had purported to reinstate as of August 1, 1937, would not become effective unless the proposed amendments were approved by the producers. Thus the alleged reinstatement was qualified in such a manner that in reality the producers were voting upon a new order rather than upon an amendment to an old order.

The provisions to be "amended" were not in effect when the vote was taken on the "amendments", and were not to be effective unless the "amendments" were approved. This is further evidence that the original Order No. 4 had in fact been abandoned by the Secretary of Agriculture beyond possibility of reinstatement.

9. The defendant admits that on June 24, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed amendment to Order No. 4, and that said public hearing was held at St. Johnsbury, Vermont, on June 30, 1937, at Boston, Massachusetts, on July 1, 1937, and at Augusta, Maine, on July 2, 1937, but the defendant is ignorant as to whether all interested parties were given an opportunity to be heard on the proposed amendment at the places or times mentioned, and is unable to admit or to deny the allegations in the bill with reference to the opportunity afforded to all interested parties at the times or places mentioned to be heard on the proposed amendment, but leaves the plaintiffs to their proof thereof. The defendant is ignorant as to whether the public hearing before mentioned was attended by representatives of the producers, handlers and consumers of milk sold in the Boston Area as alleged in paragraph 11 of said bill of complaint, and is unable to admit or to deny this allegation of paragraph 11 and leaves the plaintiffs to their proof thereof.

10. The defendant is ignorant as to whether upon the evidence introduced at the said hearing the Secretary made all the findings required by the applicable provisions of the Act as alleged in paragraph 12 of the bill of complaint and is therefore unable either to admit or deny this allegation, and leaves the plaintiffs to their proof thereof. With respect to the allegation that the Secretary issued an amendment to said Order No. 4, effective August 1, 1937, the defendant admits that the Secretary purported to issue an amendment to said Order No. 4 but denies that said amendment was effective August 1, 1937, or at any other time. The defendant denies that said amendment contains terms or conditions authorized by the applicable provisions of the Act and no others.

11. The defendant denies that said amendment to Order No. 4 was favored and approved by more than 72 percent of the pro-

ducers who during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act. And further answering the allegations of said paragraph 13 of the bill of complaint the defendant says that the referendum conducted by the Secretary for the purpose of determining producer approval of the amendment to Order No. 4 did not meet the requirements of the statute for the following reasons, among others:

(1) The defendant is informed, believes and therefore avers that a substantial number of producers who had not complied with the health regulations applicable to milk sold for consumption as milk in the Marketing Area and who were therefore not producers within the definition contained in the Order (which definition is presumptively a correct interpretation of the statute) were permitted themselves to vote or to have votes cast on their behalf by cooperative associations claiming them as members, and because of this improper inclusion of these persons who were not producers as defined in the Order, the determination of the Acting Secretary of Agriculture on the 27th of July, 1937, to the effect that the issuance of the amendment to the Order was approved or favored by over 70 percent of the producers who during the month of May, 1937, had been engaged in the production of milk for sale in said area and who participated in a referendum conducted by the Secretary on July 17, 1937, was erroneous; and that if the votes of persons who were not producers within the definition of the Order had been excluded from the computation of the vote the proposed amendment would not have been favored by the percentage of favoring votes required by the statute.

(2) The defendant is informed, believes and therefore avers that one or more associations of producers were permitted to vote on behalf of alleged member producers who, during the month of May, 1937, the representative period determined by the Secretary of Agriculture, were not engaged in the production of milk for sale in the Marketing Area.

(3) The defendant is informed, believes and therefore avers that votes were cast on behalf of a substantial number of producers by associations of which they were allegedly members despite the fact that the association was under contract to deliver to handlers outside the Marketing Area all milk received at certain country plants to which such producers delivered their milk.

(4) The defendant is informed, believes and therefore avers that the polling places designated for the referendum were so inconvenient and inaccessible to a substantial number of producers as to virtually deprive such producers of the opportunity to vote and that in some instances the polling places were closed prior to the announced closing time. The defendant protested to the Secretary of Agriculture against the inaccessibility and scarcity of the polling places about to be designated and on July 10, 1937 wrote a letter to the acting market administrator, a copy of which is annexed hereto as Exhibit C, renewing such protest.

(5) The referendum purported to be on a proposal to amend an existing order, whereas in reality the provisions to be amended were not in effect at the time of the vote and the producers were expressly denied the alternative of the old order or the amendments by statements in the printed notice of the referendum, a copy of which is annexed hereto as Exhibit A, as well as by statements on the producer ballot, a copy of which is annexed hereto as Exhibit B, which statements were to the effect that the proposed amendments would not be issued by the Secretary of Agriculture and provisions of Order No. 4 relating to prices, pooling and payments to producers would not become effective unless the issuance of the amendments was approved by two-thirds of the producers.

12. The defendant denies that the Order as amended has been continuously in effect from the purported effective date thereof to and including the date of the filing of this bill of complaint.

13. The defendant is ignorant of the truth or falsity of the facts alleged in paragraph 15 of the bill of complaint and is therefore

unable to admit or deny the same, but leaves the plaintiffs to their proof thereof.

14. The defendant admits that it is engaged in the business of receiving, buying, processing, selling and distributing milk but denies that it is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article 1 of the Order as amended, or as such is subject to the applicable provisions of the Act and of the Order as amended. The allegations of paragraph 16 of the bill of complaint which are directed to Noble's Milk Company, the defendant H. P. Hood & Sons, Inc. does not answer.

15. The defendant H. P. Hood & Sons, Inc. admits that it purchases milk from producers located in the states of Maine, New Hampshire, Vermont and New York. The defendant admits that a portion of the milk so purchased is transported to the distributing plant of the defendant corporation in Boston in interstate commerce and that it is there processed and then distributed and sold by the defendant in the Boston Area; but some of the milk purchased is processed at the country stations located elsewhere than in Boston. The defendant admits that it operates receiving stations at Auburn, West Farmington; Unity and Belfast, all in the State of Maine; at Colebrook, West Canaan and Lancaster, all in the State of New Hampshire; at Barnet, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans and Sheldon Junction, all in the State of Vermont, and at Eagle Bridge and Salem in the State of New York. The defendant admits that it also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the said milk in the Boston Area. The defendant admits that in the delivery period August 1 to August 15, 1937 it purchased milk from a total of 3186 producers. The defendant admits that of this total 902 delivered to plants located in the State of Maine, 473 to plants located in the State of New York, 1367 to plants located in the State of Vermont, 371 to plants located in the State of New Hampshire and 73 to the plant in the Commonwealth of Massachusetts. The defendant admits that from time to time it also purchases from other handlers and distributors and sells in the Boston Area milk which has been received by such handlers from pro-

ducers located outside the Commonwealth of Massachusetts and transported into the Boston Area. The defendant admits that in the delivery period August 1 to August 15, 1937, it handled 10,332,774 pounds of milk in the Boston Area. The allegations of paragraph 17 of the bill of complaint which are directed to Noble's Milk Company, the defendant H. P. Hood & Sons, Inc., does not answer.

16. The defendant admits that it has been since the purported effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, but as to the allegation that all of the milk handled by the defendant in the Boston Area since the effective date of the Order as amended has been handled in competition with milk which is purchased outside the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth and then distributed and sold in the Boston Area, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that all of the handling of milk in the Boston Area by the defendant corporation is in the current of interstate commerce as defined in Section 10 (j) of the Act, or directly burdens, obstructs or affects interstate commerce in milk and its products.

17. The defendant admits that milk is an article of diet which is of great importance to the public health, and it is imperative that a reliable and adequate supply of milk be maintained. The defendant admits that the consumers in the Boston Area are completely dependent upon milk producers outside of Massachusetts for a steady flow of milk. The defendant denies, however, that to assure a continuous reliable supply milk producers shipping into the Boston Area to the number of 18,000 must be paid fair and reasonable prices for their milk, and the defendant further says that such number includes milk producers for whose product there is no economic need in the Boston Marketing Area, and that these producers for whose product there is no economic need in the Boston Marketing Area have been induced to become milk producers shipping into the Boston market by certain cooperative associations for purposes of increasing the strength and prestige of these cooperative associations, and that the artificial

increase of the number of milk producers shipping to the Boston Area to 18,000 has greatly enhanced the amount of surplus milk in said Area to the extent of 150 percent to 300 percent more than the normal and proper surplus for said Area. And the defendant further says that it maintains only that proportion of surplus milk which is necessary to supply reasonable market demands of the Boston market for fluid milk, and that the effect of Order No. 4, as amended, is to force it as well as its producers to carry the burden of the excessive surplus now in the market causing great damage to the defendant and its producers, as well as the perpetuation of said excessive and artificially stimulated surplus milk in the Boston Marketing Area.

18. The defendant admits that Maine, New Hampshire, Vermont and Massachusetts supply practically all of the milk marketed in the Boston Area. The defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. As to the allegation that in 1935 the farm cash income from milk sold from farms in Maine represented 24 percent of the total farm cash income, in New Hampshire 44 percent, in Vermont 67 percent, in Massachusetts 38 percent, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

19. The defendant is ignorant of the truth or falsity of the allegations in paragraph 21 of the bill of complaint and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

20. The defendant admits that the Order as amended classifies milk according to the use for which the milk is sold; the defendant says that it is ignorant as to the truth or falsity of the allegation that this classification is in accordance with long established practice in the milk industry of the United States, including the Boston Area, and neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that the Order fixes a price for each such use classification, and denies that all milk sold or distributed by handlers as whole milk, chocolate milk or flavored milk is designated as Class I milk and bears a higher price than milk

sold, distributed or disposed of for other uses, the latter being designated as Class II milk. The defendant denies that the Order as amended provides for payments to the producers of milk in substantially the manner set forth in paragraph 22 of the bill of complaint. The defendant denies that under the Order the blended price is a minimum price, or that handlers are permitted to pay producers more than the blended price.

21. The defendant denies the allegations in paragraph 23 of the bill of complaint.

22. The defendant denies that by the provisions of Paragraph 3 of Section 1 of Article VIII of the Order as amended, the defendant is now required or obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of $30,703.03, and the defendant denies that said amount is now due or owing, and the defendant denies that it is now required or obligated to pay to the market administrator for the delivery period August 16 to August 31, 1937, the amount of $32,487.42, and the defendant denies that said amount is now due or owing. The defendant admits that it has failed and refused to pay to the market administrator the sum of $30,703.03 and the sum of $32,487.42, but denies that in so refusing to pay these sums it has violated or is now violating Paragraph 3 of Section 1 of Article VIII of the Order as amended. And further answering said allegations, the defendant says that it is informed and believes and, therefore, avers that certain handlers have reported to the market administrator for the periods of August 1 to August 15 and August 16 to August 31 under Article V of the Order, milk produced by certain producers who did not comply with the health regulations applicable to milk sold for consumption as milk in the marketing area, and that such milk was included by the market administrator in computing the value of milk sold or used by such handlers, and the uniform or blended prices under Sections 1 and 2 of Article VII of the Order, that such persons so reported to the market administrator and so included by him in the aforesaid computation are not producers within the definition contained in the Order, and that the inclusion of the unqualified milk in determining the blended price for the periods in August previously referred to resulted in an

illegal depression of the blended price and resulted in an erroneous increase in the amount of said $30,703.03 alleged to be due for the delivery period August 1 to August 15, 1937, and an erroneous increase in the amount of $32,487.42 alleged to be due for the delivery period August 16 to August 31, 1937, under Paragraph 3 of Section 1 of Article VIII of the Order. And the defendant further says that the market administrator in charge of said computations, as well as his assistants, have publicly and under oath admitted that if they had computed the sums alleged to be due the market administrator from the defendant under the strict provisions of the Order, such sums would not have been determined to be $30,703.03 and $32,487.42, but would have been lower than these amounts, and the defendant further says that it is ignorant as to the precise extent of the error involved in the computation of the aforesaid sums.

23. The defendant does not answer the allegations in paragraph 25 of the bill of complaint since they are directed to Noble's Milk Company.

24. The defendant admits that Section 1 of Article X of the Order, as amended, purports to require each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order, as amended, not more than two cents per hundredweight on all milk which is delivered to him by producers or produced by him. But the defendant denies that said requirement of the Order is of any legal validity.

25. The defendant admits that the market administrator has demanded of it the amount of $1,927.50 for the delivery period of August 1 to August 15, 1937, and the amount of $2,008.96 for the delivery period August 16 to August 31, 1937, under the provisions of Section 1 of Article X of the Order, and admits that it has failed and refused to pay the said amounts, but denies that said amounts are now due and owing by it or that it is required and obligated to pay the same.

26. The defendant does not answer the allegations in paragraph 28 of the bill of complaint since they are directed to the Noble's Milk Company.

27. The defendant admits that Section 1 of Article IX of the Order

has the provision set forth in paragraph 29 of the plaintiff's bill of complaint, but denies that said provision is of any legal validity.

28. The defendant admits that in the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, it purchased milk from producers who are not members of a cooperative association, and that the market administrator on account of such purchases demanded of it under the provisions of Section 1 of Article IX of the Order for the delivery period August 1 to August 15, 1937, the amount of $1,900.13, and for the delivery period August 16 to August 31, 1937; the amount of $1,980.67. The defendant further admits that it has failed and refused to pay the said amounts, but the defendant denies that it is required or obligated to pay the market administrator the amounts so demanded or that said amounts are now due and owing by it.

29. The defendant does not answer the allegations in paragraph 31 of the bill of complaint since they are directed to the Noble's Milk Company.

30. The defendant denies each and every allegation in paragraph 32 of the bill of complaint.

And further answering this defendant says that said Order No. 4 as amended is without force of law and wholly invalid for the following reasons:

A. That Order No. 4 effective February 9, 1936, was terminated as hereinbefore set forth, by the order of the Secretary of Agriculture suspending said Order on August 1, 1936, and that said Order could not be revived or amended.

B. That said Order No. 4, as amended, was not approved or favored by at least two-thirds of the producers of milk, who, during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area or by producers who, during such representative period, had produced for market at least two-thirds of the volume of milk sold within the Boston Area.

C. That in computing and determining the percentage of producers approving or favoring said Order, as amended, the market administrator included as producers persons who were not producers as defined in Article I of said Order, as hereinbefore set out.

D. That said Order No. 4, as amended, contains terms and provisions not in accordance with the Agricultural Adjustment Act, as amended and re-enacted, under and pursuant to which the Secretary of Agriculture purported to issue said Order.

And further answering, this defendant says that the provisions of the Agricultural Adjustment Act, as amended and re-enacted, purporting to regulate the marketing of milk, are unconstitutional and void in the following as well as in other respects:

A. The regulation of prices to be paid for milk to producers in the several states and the equalization of said prices among producers is not within the power of Congress to regulate commerce among the several states, as defined by Article I, Section 8 of the Constitution of the United States, and is not within any of the other powers granted to Congress by the Constitution.

B. Said Act represents an attempt on the part of Congress to exercise powers which are reserved to the States by the Tenth Amendment to the Constitution of the United States.

C. The provisions of said Act authorizing the Secretary to issue orders fixing the minimum price to be paid for milk, requiring the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the use made of such milk by individual handlers to whom it is delivered, and providing for adjustments in payments among handlers, constitute a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

D. Said Act delegates to an administrative officer legislative powers conferred exclusively on Congress under Article I, Section 1, and Article I, Section 8 of the Constitution of the United States.

E. Said Act, by providing that orders shall not be effective unless favored or approved by two-thirds of the producers within the Marketing Area, delegates to private citizens legislative powers that must be exercised exclusively by Congress.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
Solicitors for H. P. HOOD & SONS, INC.

EXHI A.

UNITED STATES DEPARTMENT OF AGRICULTURE
Room 407, Post Office Bldg.,
Boston, Mass.

July 12, 1937

Dear Sir: There is enclosed a copy of a compilation of Order No. 4 regulating the handling of milk in the Greater Boston marketing area, which incorporates certain proposed amendments to that order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective, unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston marketing area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

Enclosed is a list of the times and places at which you may cast a ballot to show your approval or disapproval of these amendments. You may visit whichever polling place is most convenient to you. When you go there to vote, it will be necessary for you to sign a register book with your name and initials identically the same as they appear on the envelope in which this letter came to you.

The questions which will appear on the ballot will be as follows:

1. How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)?
2. What is the name of the handler to whom your milk was delivered?
3. What is the location of the handler's plant to which your milk was delivered in May 1937?
4. What is the name of the county and State in which is located the farm where the above milk was produced?
5. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

Your vote on question No. 5 will indicate your approval or dis-

approval of the amendments to Order No. 4 which are contained in the enclosed compilation, referred to on the ballot.

At the polling place you will mark your ballot in secret, fold and place it in a sealed can which will not be opened until the ballots are counted at Boston. The vote of each producer will be kept strictly confidential, under rigid government regulations.

Very truly yours,

RICHARD D. APLIN,
Senior Marketing Specialist.

Enclosure.

EXHIBIT B.

MILK PRODUCER'S BALLOT

1. How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)? ..... pounds.
2. What is the name of the handler to whom your milk was delivered?
   .....
3. What is the location of the handler's plant to which your milk was delivered in May 1937? .....
   .....
4. What is the name of the county and State in which is located the farm where the above milk was produced? .....
   .....
5. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

   Yes ☐ No ☐

Provisions of Order No. 4 relating to prices, pooling, and payments to producers, will not become effective unless the amendments are approved by two-thirds of the producers.

(Your name must be signed exactly as you signed the register, else this ballot cannot be counted.)

Name .....
Address .....

Please Answer Every Question

EXHIBIT C.

July 1, 1937.

Mr. Richard D. Aplin Acting Marketing Administrator Greater Boston Marketing Area Room 407, Post Office Building Boston, Mass.

Dear Sir: We enclose herewith the lists of producers from whom we purchased milk for the Boston market during the month of May, 1937. You state in your request for this information that it is for the purpose of conducting a poll among the producers on a proposed amendment to Order Number 4.

We accede to your request in order that these producers may not be prejudiced in their right to vote. We do not recognize the so-called partial reinstatement of Order Number 4 as being of any legal effect and reserve all rights to challenge its validity.

We have been advised today that you propose to conduct the poll by the designation of a few polling places in the Northern New England Area, to which the producers must personally go to exercise their franchise. We have already protested to the Secretary of Agriculture in behalf of some 3,000 producers that this is an unfair and unjust method of taking the vote. During this period the producers are so busy with the summer farm work that they cannot afford the time to travel, in many instances fifty miles or more, to get to a voting place.

We are reluctant to believe that you will adhere to a designation of polling places which will have the practical result of depriving 3,000 producers who have been selling their milk to H. P. Hood & Sons for a long time of any opportunity to express their convictions as provided in the law. We believe that any genuine effort to have the producers exercise their franchise would require the designation of a polling place in each community where there is a milk receiving plant.

Very truly yours,

D. N. GEYER

ANSWER OF DEFENDANT NOBLE'S MILK COMPANY.

[Filed November 10, 1937.]

Now comes the defendant Noble's Milk Company and in answer to the plaintiffs' bill of complaint, says:

1. The defendant admits that the plaintiff, Henry A. Wallace, is the Secretary of Agriculture of the United States, but is without knowledge as to his motive in joining in this suit and neither admits nor denies these allegations but leaves the plaintiffs to their proof thereof.

2. The defendant Noble's Milk Company does not answer the allegations of paragraph 2 of the bill of complaint since they are addressed to the defendant H. P. Hood & Sons, Inc.

2*a*. The defendant admits that it is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 500 Rutherford Avenue, in the City of Boston in said Commonwealth. The defendant admits that Noble's Milk Company is a subsidiary of H. P. Hood & Sons, Inc. and that the corporations are operated under the same general policies, but the defendant denies that it is controlled or dominated by the defendant H. P. Hood & Sons, Inc.

3. The defendant admits the allegations of paragraph 3 of the bill of complaint.

4. The defendant is ignorant as to whether the allegations contained in paragraphs 4, 5 and 6 of the bill of complaint are true and neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

5. The defendant is ignorant of the purposes of Order No. 4 but leaves the plaintiffs to their proof thereof, if material.

6. The defendant is ignorant as to whether the allegations contained in paragraph 8 of the bill of complaint are true and is therefore unable either to admit or deny said allegations but leaves the plaintiffs to their proofs thereof.

7. The defendant in answer to the allegations of fact contained in paragraph 9 of the bill of complaint says that from February 9, 1936 to August 1, 1936, Order No. 4 was treated by the Secretary of Agriculture as being continuously in effect.

8. The defendant admits that on June 25, 1937, the acting Secretary of Agriculture purported to terminate the order of suspension effective July 1, 1937, relative to Article 1, Article 2, Article 3, Article 5, Article 6—Section 1, Article 12, Article 13, Article 14, Article 15, Article 16, but defendant is ignorant whether he did so pursuant to the authority vested in him by the provisions of the Act or the applicable general regulations thereunder and leaves the plaintiffs to their proof thereof, if material.

9. In answer to the allegations of paragraph 11 of the bill of complaint, the defendant admits that on June 24, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed amendment to Order No. 4, and that said public hearing was held at St. Johnsbury, Vermont, on June 30, 1937, at Boston, Massachusetts, on July 1, 1937, and at Augusta, Maine, on July 2, 1937, but the defendant is ignorant as to whether all interested parties were given an opportunity to be heard on the proposed amendment at the places or times mentioned, and is unable to admit or to deny the allegations in the bill with reference to the opportunity afforded to all interested parties at the times or places mentioned to be heard on the proposed amendment, but leaves the plaintiffs to their proof thereof. The defendant is ignorant as to whether the public hearing before mentioned was attended by representatives of the producers, handlers and consumers of milk sold in the Boston Area as alleged in paragraph 11 of said bill of complaint, and is unable to admit or to deny this allegation of paragraph 11 and leaves the plaintiffs to their proof thereof.

10. In answer to the allegations in paragraph 12 of the bill of complaint, the defendant says it is ignorant as to whether upon the evidence introduced at the said hearing the Secretary made all the findings required by the applicable provisions of the Act as alleged in said paragraph 12 (of the bill of compaint) and is therefore unable either to admit or deny this allegation, and leaves the plaintiffs to their proof thereof. With respect to the allegation that the Secretary issued an amendment to said Order No. 4, effective August 1, 1937, the defendant admits that the Secretary purported to issue an amendment to said Order No. 4 but is ignorant as to whether said amend-

ment was effective August 1, 1937 or at any other time, and whether said amendment contains terms or conditions authorized by the applicable provisions of the Act and no others, and leaves the plaintiffs to their proof thereof, if material.

11. Answering the allegations in paragraph 13 of the bill of complaint, the defendant says that it is ignorant as to whether said amendment to Order No. 4 was favored and approved by more than 72 percent of the producers who during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act, and leaves the plaintiffs to their proof thereof.

12. Answering the allegations in paragraph 14 of the bill of complaint the defendant says that it is ignorant as to whether the Order as amended has been continuously in effect from the purported effective date thereof to and including the date of the filing of this bill of complaint, and leaves the plaintiffs to their proof thereof.

13. The defendant is ignorant of the truth or falsity of the facts alleged in paragraph 15 of the bill of complaint and is therefore unable to admit or deny the same, but leaves the plaintiffs to their proof thereof.

14. The defendant does not answer the allegations in the first sentence of paragraph 16 of the bill of complaint which are directed to the defendant H. P. Hood & Sons, Inc. The defendant admits that it is engaged in the business of receiving, buying, processing, selling and distributing milk, but it does not answer the allegation that it is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article 1 of the Order as amended, and as such is subject to the applicable provisions of the Act and of the Order as amended, since that is a conclusion of law.

15. The defendant Noble's Milk Company does not answer the allegations in paragraph 17 of the bill of complaint which are addressed to the defendant H. P. Hood & Sons, Inc. The defendant Noble's Milk Company admits that it purchases milk from producers located in the State of Vermont, but says that these producers in the State of Vermont furnish a very small proportion of its milk

supply. It admits that the milk from producers in the State of Vermont is transported in interstate commerce into the Commonwealth of Massachusetts, but says that such milk is transported by agents of the said Vermont producers and that the sale of said milk to the defendant Noble's Milk Company is consummated in the Commonwealth of Massachusetts. The defendant admits that this milk is then sold to the defendant H. P. Hood & Sons, Inc. The defendant admits that some of the processing of this milk is done by the defendant H. P. Hood & Sons, Inc., and that H. P. Hood & Sons, Inc. distributes and sells this milk in the Boston Area. The defendant further admits that it purchases milk from producers located in the Commonwealth of Massachusetts and says that these purchases constitute by far the greater proportion of its milk supply, and further admits that it sells the said milk to the defendant H. P. Hood & Sons, Inc. which contributes to the processing of the said milk and distributes and sells it in the Boston Area. The defendant admits that during the period August 1 to August 15, 1937, the defendant Noble's Milk Company handled 585,724 pounds of milk in the Boston Area.

16. In answer to the allegations in paragraph 18 of the bill of complaint, the defendant admits that it has been since the purported effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, but as to the allegation that all of the milk handled by the defendant Noble's Milk Company in the Boston Area since the purported effective date of the Order as amended has been handled in competition with milk which is purchased outside of the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth and then distributed and sold in the Boston Area, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that all of the handling of milk in the Boston Area by the defendant corporation is in the current of interstate commerce as defined in Section 10 (j) of the Act, or directly burdens, obstructs or affects interstate commerce in milk and its products. The defendant Noble's

Milk Company does not answer the allegation in paragraph 18 of the bill of complaint which is addressed to the defendant H. P. Hood & Sons, Inc.

17. In answer to paragraph 19 of the bill of complaint, the defendant admits the allegations in the first two sentences of said paragraph; but the defendant is ignorant as to the truth or falsity of the allegations in the last sentence thereof and leaves the plaintiffs to their proof thereof.

18. In answer to the allegations in paragraph 20 of the bill of complaint, the defendant admits that Maine, New Hampshire, Vermont and Massachusetts supply practically all of the milk marketed in the Boston Area. The defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. As to the allegation that in 1935 the farm cash income from milk sold from farms in Maine represented 24 percent of the total farm cash income, in New Hampshire 44 percent, in Vermont 67 percent, in Massachusetts 38 percent, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

19. The defendant is ignorant of the truth or falsity of the allegations in paragraph 21 of the bill of complaint and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

20. In answer to the allegations in paragraph 22 of the bill of complaint, the defendant admits that the Order as amended classifies milk according to the use for which the milk is sold; the defendant further says that it is ignorant as to the truth or falsity of the allegation that this classification is in accordance with long established practice in the milk industry of the United States, including the Boston Area, and neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant does not answer the remaining allegations in said paragraph since they purport to be merely descriptive of Order No. 4, as amended, a copy of which is attached to the bill of complaint, marked "Exhibit E".

21. The defendant admits the allegations in the first two sentences

in paragraph 23, but denies the allegations contained in the last sentence of said paragraph.

22. The defendant Noble's Milk Company does not answer the allegations in paragraph 24 of the bill of complaint since they are addressed to the defendant H. P. Hood and Sons, Inc.

23. In answer to the allegations in paragraph 25 of the bill of complaint the defendant admits that the market administrator (purporting to act under the provisions of Paragraph 3 of Section 1 of Article VIII of the Order) has demanded of it the amount of $1,823.81 for the delivery period August 1 to August 15, 1937, and the amount of $1,957.34 for the delivery period August 16 to August 31, 1937, and that it has not paid these sums directly to the market administrator; but the defendant denies that it has violated or is now violating Paragraph 3 of Section 1 of Article VIII of the Order inasmuch as it has paid said amounts of $1,823.81 and $1,957.34 demanded of it by the market administrator into the registry of this court to abide by the judgment of this court upon a certain bill of interpleader filed by Noble's Milk Company, against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.

24. The defendant admits that Section 1 of Article X of the Order, as amended, requires each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order, as amended, not more than two cents per hundredweight on all milk which is delivered to him by producers or produced by him.

25. The defendant does not answer the allegations in paragraph 27 of the bill of complaint since they are directed to the defendant H. P. Hood & Sons, Inc.

26. In answer to the allegations in paragraph 28 of the bill of complaint, the defendant admits that the market administrator has demanded of it the amount of $117.14 for the delivery period August 1 to August 15, 1937 and the amount of $120.93 for the delivery

period August 16 to August 31, 1937, under the provisions of Section 1 of Article X of the Order, and the defendant admits that it has not paid these sums directly to the market administrator, but the defendant denies that it has violated or is now violating the provisions of said Section 1 of Article X inasmuch as it has paid said amounts into the registry of this court to abide by the judgment of this court, upon a certain bill of interpleader filed by Noble's Milk Company against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.

27. In answer to the allegations in paragraph 29 of the bill of complaint, the defendant admits that Section 1 of Article IX of the Order requires that except in the case of milk purchased from producers who are members of a cooperative association, each handler shall deduct not more than two cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator on or before the twenty-fifth day after the end of such marketing period, to be expended by the market administrator for market information to, and verification of weights, sampling and testing of milk purchased from, said purchasers.

28. The defendant does not answer the allegations in paragraph 30 of the bill of complaint since they are directed to the defendant H. P. Hood & Sons, Inc.

29. In answer to the allegations in paragraph 31 of the bill of complaint, the defendant admits that in the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, it purchased milk from producers who were not members of a cooperative association determined by the Secretary of Agriculture to be qualified in accordance with Section 2 of Article IX of said Order and that the market administrator on account of such purchases demanded of it under the provisions of Section 1 of Article IX of the Order for the delivery period August 1 to August 15, 1937, the amount of $117.14 and for the delivery period August 16 to August 31, 1937, the amount of $120.93, and the defendant admits that it has not paid these sums directly to the market administrator, but the defendant

denies that it has violated or is now violating the provisions of Section 1 of Article IX of said Order inasmuch as it has paid said amounts into the registry of this court to abide the judgment of this court, upon a certain bill of interpleader filed by Noble's Milk Company against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.

30. Answering the allegations of paragraph 32 of the bill of complaint, the defendant says that it is ignorant of the matters therein alleged and leaves the plaintiffs to their proof thereof.

31. And further answering the defendant says that: On October 29, 1937, it filed in this court a bill of interpleader joining as defendants therein Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area, and certain producers of milk selling to Noble's Milk Company. A copy of said bill is attached hereto, marked "Exhibit A", and made a part of this answer as fully as if the same were separately set forth herein. Said bill set forth the demand of Samuel W. Tator as Market Administrator of the Greater Boston, Massachusetts, Marketing Area, of the sums referred to in paragraphs 25, 28, 31, of the plaintiffs' bill of complaint in the present cause. Said bill further set forth that the producers selling to Noble's Milk Company were paid under and by virtue of a contract with Noble's Milk Company for the periods August 1 to August 15, 1937, and August 16 to August 31, 1937, a guaranteed minimum price less their proportionate part of the aforesaid total amounts demanded for these periods by Samuel W. Tator as market administrator; that a claim had been made on behalf of all the producers named in said bill to the effect that they were entitled to the full price guaranteed in the aforesaid contract for the August delivery periods and to the effect that the defendant Noble's Milk Company was without authority to make any deductions from said price under the terms of its contract with such producers, inasmuch as the defendant Noble's Milk Company was not legally required to pay any sums to Samuel W. Tator, as market administrator, in respect to milk sold to the Noble's Milk Company by such producers. Noble's Milk Company paid into the registry of this court

the sum of $10,202.72, being the total amount of the sums demanded by the market administrator for the delivery periods from August 1 to September 30, 1937, and including the amounts referred to in paragraphs 25, 28, 31 of the bill of complaint in the present case, as being due and owing to the said market administrator, said sum of $10,202.72 to abide the judgment of this court upon the conflicting claims thereto of said market administrator and said producers selling milk to Noble's Milk Company. The defendant further says that in said bill of interpleader in paragraph 16 thereof, Noble's Milk Company committed itself to pay into the registry of this court all sums hereafter demanded by the market administrator under the terms and provisions of said Order No. 4 as amended to abide the judgment of this court, and, in accordance with the commitment in paragraph 16 of said bill, Noble's Milk Company on November 8, 1937 paid into the registry of this court the sum of $4,796.17, being the total of the demands of the market administrator under Order No. 4 as amended, for the delivery period October 1 to October 15, 1937, said further sum to abide the judgment of this court upon the conflicting claims thereto of said market administrator and said producers selling milk to Noble's Milk Company. The defendant Noble's Milk Company has complied with all the provisions of said Order, as amended, except to make payments directly to the market administrator as required by the provisions of said Order, as amended, and, in the present case, the plaintiffs make no claim that the defendant has violated or threatens to violate said Order, as amended, in any other particular. The plaintiffs are seeking in the present case to require the defendant Noble's Milk Company to pay over the amounts allegedly due and owing under said Order No. 4, as amended, to the market administrator, Samuel W. Tator, they assert no right or claim on their own behalf to said sums, and under the provisions of said Order, as amended, they have no claim or right on their own behalf to said sums. The issue in the present case, whether the defendant Noble's Milk Company is legally obligated to pay said sums to the market administrator, is the same issue involved in said bill of interpleader which is now pending in this court and still undetermined. The defendant Noble's Milk Company asserts no claim to the funds deposited in the registry of this court and has made the

said funds available to the market administrator if he is legally entitled thereto.

Wherefore, this defendant prays:

1. That the present proceeding against it be abated until the determination and disposition of the said bill of interpleader set out in paragraph 31 hereof;

2. That, in the event the present proceeding be not abated, the parties defendant to said bill of interpleader, namely, the market administrator, Samuel W. Tator, and the defendants named in paragraph 3 of said bill of interpleader, be made parties to this proceeding and be decreed to interplead herein so that it may be determined in such manner as this court shall direct to which of them the sums already deposited in the registry of this court and such sums as may hereafter be deposited ought to be paid; and

3. That this defendant be discharged from all liability to the plaintiffs herein or to the defendants in said bill of interpleader in connection with all demands made in the bill of complaint in this cause.

ROPES, GRAY, BOYDEN, & PERKINS,
CHARLES B. RUGG,
Solicitors for NOBLE'S MILK COMPANY.

EXHIBIT A.

District Court of the United States
For the District of Massachusetts

In Equity No.

Noble's Milk Company, a Massachusetts Corporation, Plaintiff,

v.

Samuel W. Tator, Marketing Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett, et al, Defendants

BILL OF INTERPLEADER

Plaintiff herein, Noble's Milk Company, brings this its bill of interpleader under the provisions of the Act of Congress of January 20, 1936, c. 3, § 1; 49 Stat. 1096; U. S. C. Title 28, § 41 (26), and alleges:

1. Plaintiff herein, Noble's Milk Company, is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth. It is now and has been for some time engaged in the business of receiving, buying, processing, selling and distributing milk.

2. The defendant, Samuel W. Tator, is a citizen of the State of Connecticut and resides in the City of New Haven in said State. He was on August 1, 1937, designated by the Secretary of Agriculture of the United States as Market Administrator for the Greater Boston, Massachusetts, Marketing Area under the provisions of Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, issued by the said Secretary of Agriculture on February 7, 1936, as amended by Amendment No. 1 to said Order, issued by the Secretary July 28, 1937, and he is now purporting to exercise all the powers and functions of such Market Administrator under the terms and provisions of said Order No. 4, as amended.

3. The following defendants are all citizens of the Commonwealth of Massachusetts and residents of the city or town in said Commonwealth preceding their names: in Adams: Clifton A. Burnett, Arthur Stollmann, Augustin Stollmann, Augustin Gancarz, John Jejko, Richard C. Stohlman, Frank E. Sprague; in Ashfield: Leon C. Sears, Mrs. H. A. Streeter, Hector D. Boucher, George W. Lesure, Wallace A. Ward, William H. Howes, Donald W. Lilly, Archie H. Jenkins, Lawrence E. Jenkins, Leon G. Howes, Mrs. Pia Gallerani, Walter A. Whitney, Wallace A. Strohecker, Charles A. Richmond, Dr. Frank L. Wheeler, Jonathan Sears, David Fuller, Mrs. Emmett Hall, Albert L. Howes, Robert E. Williams, Leland F. Wheeler, Fred R. Townsley, Clifton W. Scott; in N. Ashfield: Clifford N. Lilly, Harold Hartwell, George C. Field, George E. Morton, Fred K. Hillman, John Mychalak, Herbert L. Clark & Son; in Buckland: Charles W. Trow, Julius M. Cranson, Gilbert [redacted] Griswold, Charles L. Hunt, Clifton L. Kenny; in Cheshire: Albert Kordana, York Jaeschke, Philip Boyer; in Charlemont: Jesse G. Thompson, Francis P. Gelipault, Roland A. Lively, Addelor Bellow, W. Carl Smith, Ramson S. Bolton, Heber Stetson, Oscar J. Lively, Herb. E. Crowingshield, Joseph Giard, Ernest C.

Wilder, Hezekiah E. Ward, Mrs. Lillian B. Hartwell, Dona J. Auge, Preston G. Warfield, Samuel R. LaBelle, Richard G. Purington, Henry H. Phillips, Harry F. Hawkes, Harold T. White, Albert L. White, George L. Rice, Ernest R. Sears, George E. Sears, Arthur H. Maynard, Le Roy T. Hunt, Fred R. Stiles, Arthur L. Hawkes, Fred J. Conley, Ray Hicks, Roy A. Hicks, William D. Pierson, Louis A. Davenport, Fred A. Fuller, James Willard, Mrs. Helen K. Stafford, Frank R. Harris, Alfred Labell, Charles H. Orr, Frank R. Harris; in Colrain: Scott E. Courser, Ruth Riggs, Calvin P. Call, Harvey Copeland, Chas. C. B. Mayer, Ernest W. Joy, Pearl L. Joy, Ralph H. Peterson, Coombs Bros., William H. Coombs, Lawrence E. Shearer, George Mislak, Oscar Fairbanks & Son, Joseph Rubin, Harry C. Lampson, Arthur L. Fish, Forest E. French, Fred Gilderdale, Sarah Riel, Edward Gadreault, Arthur P. Bolduc, Ozra A. Thompson, Nelson W. Joy, William B. Call, Nelson H. Purrington, Frank W. Fowler, Floyd N. Stone, Merrick C. Harris & Son; in Conway: Israel G. Boyden, Winsck Routousky, John Hanas; in Griswoldville: Henry A. Dwight, Byron A. Stowe, Fred Bolduc, Wilfred Lively, Fred A. Starkey, Edw. Gabreault, Alexander H. Ryan, Arthur Dean Hillman, Cleophas Lively, Walter H. King, Herbert Thibodeau, Frank A. Brown; in Hancock: Henry Blair, Leon H. Roberts; in Heath: Myron S. Hamilton & Son, Frank L. Gleason, Horatio L. Dickinson, Frederick W. Burrington, Edith I. Grant, Fred S. Coates, Anna M. Burrington: in North Heath: Medrick Lively; in Lanesboro: William S. Kessler, Charles J. Carifey, William Raney; in Lyonsville: Calvin P. Call; in New Ashford: George Bolotin, F. H. Phelps; in New Boston: Louis Albert, Dominus Competti, Frank Hyrchvich, David Pinsky, Howard Springs, Clara Snyderman, Abraham Kleiner, Mulvania Kolesnick, Ben Lincovitch, Edwin Strickland, Max Henry, Samuel Steinberg; in North Adams: Loren Estes; in Plainfield: Ernest A. Rice, Charles E. Thatcher, Cora Atherton, Admx.; in Richmond: Theodore F. Cook, Charles R. Pierce: in Rowe: Howard Liese; in Shattuckville: Ross E. Purrington; in Shelburne Falls: Joe S. Gibas, Perley C. Bronson, George L. Bailey, Earl W. Lilly, Walter R. Scott, Mrs. Roy W. Dunbar, Otis L. Field, Leon F. Goodnow, Charles Zalenski, Andrew Danilo, John M. Warga, Raymond L. Wheeler,

Herbert F. Elmer, Chas. A. Hocum, Anna Hocum, Mrs. Steve Doneilo, Church & Broadhurst, Stephen Krasnoselski, Allen A. Kendrick, Leon D. Hall, Charles C. Gray, Mrs. Elizabeth Gray, Ernest S. Barnes, Nelson D. Graves, Lewis Bates, Clayton H. Eldridge, Michael C. Warbeck, Joel Wayne Starkey, Steve Truce, Peter Stafursky, Lyman W. Dane, Luther D. Dunnell, Edmund G. Wilder, Morris D. Mitchell, Christian Finck, John Cardwell, Zerah H. Fiske & Son, Daniel P. Bardwell, Albert C. Bray & Son, William D. Long, Fred Laird, Charles S. Richardson, Charles J. Nillman, Frank W. Dyer No. 1, George L. Mayer, Walter Barnard, Frank B. Williams, Louis R. Long, Clarence W. Ryder, Stanley W. Reynolds, Philip A. Crafts, Arthur J. Hale, William Peltier, Frank Novak, Mike C. Doneilo, William H. Pfersick, Gertrude Goddard, Alfred A. Bilger, Adam C. Ewart, Lively & Lawrence Leo; in Tyringham: Raymond Taylor, Louis Hiscox; in Stockbridge: Maria A. Backus; in West Stockbridge: Joseph Keresey, Charles Kratt; in Williamstown: Jim Grady, Arthur E. Rosenburg, Donald H. Coie, Henry George, Fred Wood; in South Williamstown: Henry Comstock.

The following defendants are all citizens of the State of Vermont and residents of the city or town in said State preceding their names: in Jacksonville: Marcius A. Butterfield, Wallace S. Allen & Son, Fred Bernard; in West Halifax: Lewis A. Sumner, Leon C. La Rocke; in Whitingham: Gerald H. Wheeler, Arthur W. Kingsley, Leon O. Carpenter, Arnold B. Shippee, Bert E. Shippee; in Wilmington: Earl C. Dix.

All said defendants named in this paragraph are now, or at some time since August 1, 1937 have been, engaged in the business of producing milk and selling milk to the plaintiff, Noble's Milk Company.

4. On February 7, 1936, the Secretary of Agriculture of the United States, assuming to act under the provisions of Section 8c of the Agricultural Adjustment Act, Act of May 12, 1933 (48 Stat. 31, U.S.C. Title 7, Section 608c), as amended August 24, 1935 (49 Stat. 672), issued Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, effective February 9, 1936. On July 28, 1937, the Secretary of Agriculture of the United States, assuming to act under the provisions of said Act, as reenacted and

amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress), issued Amendment No. 1 to said Order No. 4, effective August 1, 1937. A copy of said Order No. 4, as so amended, marked Exhibit "A", is attached hereto and made a part hereof.

5. The defendant Samuel W. Tator, in his capacity as Market Administrator, claims that the plaintiff is a "handler" as defined in Section 8c (1) of the Act, referred to in paragraph 4, hereof, and in Paragraph 6 of Section 1 of said Order No. 4, as amended, and as such is subject to the applicable provisions of said Act and said Order, as amended, and that all milk purchased by the plaintiff is subject to the terms and provisions of said Order, as amended.

6. Under date of August 27, 1937, the said defendant, Samuel W. Tator, in his capacity as Market Administrator, purporting to act in accordance with Article VII, Section 2 of said Order, as amended, announced a schedule of Class II prices and blended prices to be paid producers for milk delivered by them to handlers during the delivery period, August 1 to August 15, 1937. The said defendant, Samuel W. Tator, in his capacity as Market Administrator, subsequently announced schedules of Class II prices and blended prices for the delivery periods August 15 to August 31, 1937, September 1 to September 15, 1937, and September 16 to September 30, 1937, respectively.

7. Under date of September 3, 1937, said defendant, Samuel W. Tator, in his capacity as Market Administrator, notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period August 1 to August 15, 1937 the sum of $1,823.81 for producer settlement, pursuant to paragraph 3 of Section 1 of Article VIII of said Order No. 4, as amended, and, in addition, the sum of $117.14 for expenses of administration pursuant to Section 1 of Article X of said Order, as amended, and the sum of $117.14 for marketing services, pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before September 9, 1937 of an aggregate amount of $2,058.09. Under date of September 16, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period August

16 to August 31, 1937, the sum of $1,957.34 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of $120.93 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of $120.93 for marketing services pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for the payment to him on or before September 25, 1937, of an aggregate sum of $2,199.20. Under date of October 5, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period September 1 to September 15, 1937, the sum of $2,715.12 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of $113.37 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of $113.37 for marketing services pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before October 10, 1937, of an aggregate sum of $2,941.86. Under date of October 18, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period September 16 to September 30, 1937 the sum of $2,774.91 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of $114.33 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of $114.33 for marketing services pursuant to Section 1 of Article X of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before October 25, 1937, of an aggregate sum of $3,003.57. The total amount of the sums so demanded for the delivery periods from August 1 to September 30, 1937, inclusive, is $10,202.72.

8. On October 1, 1937, a bill in equity was filed in the United States District Court for the District of Massachusetts by United States of America and Henry A. Wallace, Secretary of Agriculture, against the plaintiff herein, Noble's Milk Company, and H. P. Hood & Sons, Inc., under the provisions of Section 8a (6) of the Agricultural Adjustment Act, as amended, to enforce, and to prevent Noble's

Milk Company and H. P. Hood & Sons, Inc. from violating the provisions of Order No. 4, as amended. In said bill the plaintiffs therein allege that under the provision of Order No. 4, as amended, there is now due and owing to the Market Administrator from Noble's Milk Company the sums demanded by said market administrator for the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, as set out in paragraph 7 hereof. The plaintiffs therein seek a preliminary injunction commanding Noble's Milk Company to pay over to said market administrator all sums due and owing by it under the provisions of said Order, and permanent injunctions preventing Noble's Milk Company from violating the provisions of said Order, as amended, and commanding Noble's Milk Company to comply with all provisions of said Order, as amended.

9. The plaintiff herein, Noble's Milk Company, at some time during the period from August 1, 1937 to the date of this bill, has purchased milk from each of the defendants named in paragraph 3 hereof, and during such period it has continuously purchased and is now purchasing milk from most of the defendants named in said paragraph. It has purchased no milk during said period from any other producer than the defendants named in said paragraph. All such milk has been sold and delivered to the plaintiff within the Commonwealth of Massachusetts. On or about August 1, 1937 the plaintiff, pursuant to its usual practice, posted at each of its milk receiving stations a plant notice setting forth the terms and conditions on which it would purchase and pay for milk delivered to it during the first half of August. A copy of such plant notice, marked Exhibit B, is annexed hereto and made a part hereof. All milk purchased by the plaintiff from the defendants named in paragraph 3 hereof during the delivery period August 1 to August 15 was purchased on the terms and conditions contained in said plant notice. On or about August 15, September 1 and September 15, 1937, respectively, the plaintiff posted at each of its milk receiving stations a similar plant notice setting forth the terms and conditions on which it would purchase and pay for milk delivered to it during the two-week period following the posting of such plant notices. Copies of each of

said plant notices are annexed hereto and made a part hereof and marked Exhibits C, D and E, respectively. All milk purchased by the plaintiff from the defendants named in paragraph 3 hereof during each delivery period from August 15 through September 30, 1937, was purchased on the terms and conditions contained in the plant notice applicable to that period. The plant notice posted by the plaintiff for each delivery period from August 1, 1937 through September 30, 1937, has provided that the plaintiff will pay for milk delivered by individual producers to its plants for such delivery period a guaranteed minimum price specified in said notice, but that the plaintiff is authorized to deduct each producer's proportionate part of any sums which the plaintiff is legally required to pay to the Federal Milk Administrator (meaning thereby the Market Administrator for the Greater Boston, Massachusetts, Marketing Area) or pays pursuant to an order of any court in connection with litigation concerning said order, in respect of milk delivered during such period. In each delivery period from August 1, 1937 as to which the defendant Samuel W. Tator, as Market Administrator, has computed and announced a blended price, as set out in paragraph 6 hereof, the guaranteed minimum price contained in the plant notice for the corresponding period has been higher than such blended price.

10. The plaintiff has made payments to each defendant named in paragraph 3 hereof who sold and delivered milk to it during the delivery periods of August 1 to August 15, August 16 to August 31, September 1, to September 15, and September 16 to September 30. Because of the claim of the defendant Samuel W. Tator that the plaintiff is a "handler" as defined in paragraph 6, Section 1 of Article I of Order No. 4, as amended, and that under the terms and provisions of said Order No. 4, as amended, it is legally obligated to pay the sums already demanded by him, as set forth in paragraph 7 hereof, the plaintiff, in making payments to the defendants named in paragraph 3 hereof for deliveries of milk from August 1 to September 30, did not pay to such defendants the guaranteed minimum price specified in the plant notice for the applicable delivery period but made deductions from said price. In each of the delivery periods August 1 to August 15, 1937 and August 16 to August

31, 1937 it paid to each of said defendants named in paragraph 3 hereof, from whom it had purchased milk during the period, the blended price computed and announced for the period by the defendant Samuel W. Tator, as Market Administrator, payable to producers not members of a cooperative association as defined in said Order No. 4, as amended. The net price paid to each producer on this basis was the guaranteed minimum price less his proportionate part of the total amount demanded for the period in question from the plaintiff, Noble's Milk Company, by the defendant Samuel W. Tator, as Market Administrator, as set forth in paragraph 7 hereof. In the delivery period September 1 to September 15, 1937, the plaintiff paid to each of said defendants named in paragraph 3 hereof from whom it had purchased milk during the period the said blended price payable for the period to producers not members of a cooperative association as defined in said Order No. 4, as amended, plus 11.3 cents per hundredweight. In the delivery period September 16 to September 30, 1937 the plaintiff paid to each of the defendants named in paragraph 3 hereof the blended price payable for the period to producers not members of a cooperative association as defined in said Order No. 4, as amended, plus 12 cents per hundredweight. The plaintiff, in making said payments, stipulated, and each producer receiving it agreed, that if the plaintiff should pay to the defendant Samuel W. Tator as Market Administrator, the sums demanded by him, it might offset the respective amounts of 11.3 cents and 12 cents paid in excess of the blended price in making payments to said producers for subsequent deliveries.

11. A claim has been made and is now made against the plaintiff Noble's Milk Company on behalf of all the defendants named in paragraph 3 hereof that all said defendants are entitled to the full price guaranteed in the plant notices, set out in paragraph 9 hereof, for the delivery periods from August 1 to September 30, 1937; that the plaintiff was and is without authority to make any deductions from said price under the terms of said plant notices; that the plaintiff is not legally required to pay any sums to the defendant Samuel W. Tator as Market Administrator in respect to milk sold to the plaintiff by said defendants named in paragraph 3 hereof, and that

the said defendants named in paragraph 3 hereof are entitled to recover the amounts deducted in making payments to them for the delivery periods August 1 to September 30, 1937, as set forth in paragraph 10 hereof, and to retain, without any liability to refund to the plaintiff, the sum per hundredweight in excess of the blended price paid for delivery periods September 1 to September 15 and September 16 to September 30, as set out in paragraph 10 hereof.

12. The plaintiff now has in its possession the sum of $10,202.72, being the total amount demanded from it by the defendant Samuel W. Tator, as Market Administrator, as set out in paragraph 7 hereof, and as to which the defendants named in paragraph 3 hereof are asserting the claims set out in paragraph 11 hereof.

13. By reason of the conflicting claims of the said defendant, Samuel W. Tator, as Market Administrator, and of the said defendants named in paragraph 3 hereof, the plaintiff Noble's Milk Company is in great doubt as to which is entitled to the sum of $10,202.72 now in its hands, and under the circumstances is in great danger of being harassed by vexatious litigation and cannot safely pay the sums demanded by the defendant Samuel W. Tator, to him as Market Administrator, or to the defendants named in paragraph 3 hereof, without the aid of this court.

14. The plaintiff, Noble's Milk Company, has paid into the registry of this court the sum of $10,202.72, being the amount demanded by the defendant Samuel W. Tator as Market Administrator, as due and owing to him under the provisions of Order No. 4, as amended, as set out in paragraph 7 hereof, to abide the judgment of this court.

15. So long as Order No. 4, as amended, continues in force, further amounts will become due from the plaintiff Noble's Milk Company under its terms and provisions. The plaintiff is informed and believes and, therefore, alleges that the defendant Samuel W. Tator, so long as he is Market Administrator, will continue to make demands on the plaintiff for payment to him of all amounts becoming due under said Order No. 4, as amended, and that the defendants named in paragraph 3 hereof, or such of them as continue to sell and deliver milk to the plaintiff, will continue to assert that the

plaintiff is not legally obligated to pay to the defendant Samuel W. Tator, as Market Administrator, any amounts hereafter coming due under the terms and provisions of said Order No. 4, as amended, and is without authority to deduct all or any part of such amounts from payments due to them in respect to milk sold and delivered by them to the plaintiff. In the event of such conflicting claims of the said defendant, Samuel W. Tator, as Market Administrator, and of the defendants named in paragraph 3 hereof, the plaintiff will be in doubt as to whether to make payments to the defendant Samuel W. Tator, as Market Administrator, of amounts coming due under the terms and provisions of said Order No. 4, as amended, and will continue to be in danger of being harassed by multiple and vexatious litigation and will be unable safely to pay to the defendant Samuel W. Tator, as Market Administrator, any amounts which may hereafter be so demanded by him, without the aid of this court.

16. The plaintiff, Noble's Milk Company, will pay into the registry of this court all sums hereafter demanded by the defendant Samuel W. Tator, under the terms and provisions of said Order No. 4, as amended, to abide the judgment of the court.

Wherefore, the plaintiff prays:

1. That said Samuel W. Tator, as Market Administrator, and the defendants named in paragraph 3 hereof be decreed to interplead and that it may be determined in such manner as this court shall direct to which of them the sum of $10,202.72 already deposited in the registry of this court and such sums as may be hereafter paid into the registry of this court pursuant to paragraph 16 of this bill ought to be paid.

2. That the said Samuel W. Tator, as Market Administrator, and the defendants named in paragraph 3 hereof be temporarily enjoined from instituting or further prosecuting in any state or federal court any suit against the plaintiff, Noble's Milk Company, to require said plaintiff, Noble's Milk Company, to pay all or any part of the sums deposited or to be deposited in the registry of this court by said plaintiff pursuant to paragraphs 14 and 16 of this bill, and that such temporary injunction be made permanent by final decree in this cause.

3. That the plaintiff, Noble's Milk Company, be released and discharged from all further liability to the defendant Samuel W. Tator and to the defendants named in paragraph 3 of this bill in respect to any amounts already deposited in the registry of this court demanded by any of said defendants and, upon deposit of any amounts hereafter pursuant to the provisions of paragraph 16 of this bill, in respect to such amounts.

4. That the plaintiff be awarded all other, further and different relief as to this court may seem just and proper.

NOBLE'S MILK COMPANY
By Edwin L. Noble
Vice-President and Treasurer

Ropes Gray Boyden & Perkins
Charles B Rugg
Solicitors for the plaintiff

Commonwealth of Massachusetts

Suffolk, ss.

Edwin L. Noble, being first duly sworn, deposes and says that he is the Vice President and Treasurer of Noble's Milk Company, the plaintiff in the foregoing bill of interpleader; that he is duly authorized to make oath to the same; that he makes this affidavit on behalf of the plaintiff in the foregoing bill of interpleader; that he has read the foregoing bill and knows the contents thereof; and that the same is true as of his own knowledge, except the matters stated to be on information and belief, and as to those matters he believes them to be true.

EDWIN L. NOBLE
Vice President and Treasurer of
Nobles' Milk Company

Subscribed and sworn to before me this 28th day of October, 1937.
Warren F. Farr
Notary Public

EXHIBIT B.

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1, 1937. Following our custom of some months past, we are quoting a price for August milk subject to such adjustments as the order may require.

Noble's Milk Company will pay for the first half of August, 1937 for all milk delivered by individual producers to this plant, not less than $2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price of $2.47 per cwt. net, Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection wih litigation concerning said Order, in respect of milk delivered in said period. No producer shall be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice

will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

August 1, 1937

EXHIBIT C.

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order purports to become effective August 1, 1937. Following our custom of some months past, we are quoting a price for milk for the last half of August as set forth below.

Noble's Milk Company will pay for the last half of August, 1937 for all milk delivered by individual producers to this plant, not less than $2.52 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay for the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally

repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

August 16, 1937

EXHIBIT D.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the first half of September, 1937 for all milk delivered by individual producers to this plant, not less than $2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of

such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In the case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

September 1, 1937

EXHIBIT E.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the last half of September, 1937 for all milk delivered by individual producers to this plant, not less than $2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company

the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes of other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

September 16, 1937

On the nineteenth day of November, A. D. 1937, a memorandum of the court was announced, a preliminary injunction to be entered pending a hearing on the merits, defendants' and plaintiff's requests for rulings being denied except insofar as consistent with memorandum.

On the twenty-fourth day of November, A. D. 1937, supplemental findings of fact was filed to become part of the memorandum, dated November 19, 1937.

On the thirtieth day of November, A. D. 1937, a supplemental memorandum was filed,

Thereupon, to wit, November 30, 1937, the following Decree for Temporary Injunction was entered:

DECREE FOR TEMPORARY INJUNCTION.

November 30, 1937.

SWEENEY, J. This cause having come on to be heard on the twenty-ninth day of October, 1937, on the application of the plaintiffs for a temporary injunction, and the cause having been argued by counsel,

Now, therefore, it is ordered, adjudged, and decreed:

(1) That the defendants, their agents, officers, employees, successors, and assigns be and they hereby are restrained and enjoined from violating any of the provisions of Order No. 4 as amended, regulating the handling of milk in the Greater Boston Marketing Area, during the pendency of this suit or until further order of this court.

(2) That the defendants are hereby commanded and directed to pay to the market administrator within seven days after the entry of this decree, (a) the amounts found by this court to be now due and owing by the said defendants under the provisions of Order No. 4 as amended and specified in the findings made by this court herein, and (b) all other amounts which are now due and owing by the said defendants under the provisions of said Order No. 4 as amended.

(3) That the defendants are hereby commanded and directed hereafter to pay to the market administrator all amounts which may hereafter become due and owing under the provisions of Order No. 4 as amended during the pendency of this suit, the said payments to be made in the manner and at the times prescribed by said Order No. 4 as amended.

(4) That the defendants, their agents, officers, employees, successors, and assigns be and they hereby are commanded and directed to comply with all of the provisions of said Order No. 4 as amended during the pendency of this suit or until further order of this court.

GEO. C. SWEENEY,
United States District Judge.

11–30–37.

From the foregoing decree for temporary injunction on the thirtieth day of November, A. D. 1937, H. P. Hood & Sons, Inc.,

and Noble's Milk Company, defendants, both claimed appeals to the United States Circuit Court of Appeals for the First Circuit, and security on appeals being waived by the plaintiffs, said appeals were allowed by the court on the same day.

[MEMORANDUM. An appeal record was duly certified by the Clerk of the United States District Court and entered in the United States Circuit Court of Appeals for the First Circuit at the October Term, 1937, to wit, March 15, 1938 and entitled No. 3325, H. P. Hood & Sons, Inc., et al., Defendants, Appellants *v.* United States of America, et al., Plaintiffs, Appellees. JAMES S. ALLEN, *Clerk.*]

On the thirtieth day of November, A. D. 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that an application of the defendant, H. P. Hood & Sons, Inc., for supersedeas pending appeal be denied.

Also on the thirtieth day of November, A. D. 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that an application of the defendant Noble's Milk Co., for supersedeas pending appeal be denied.

On the third day of December, A. D. 1937, applications are made by both defendants to the Honorable George H. Bingham, United States Circuit Judge, for supersedeas pending appeal. This cause was thence continued to the December Term, A. D. 1937, when, to wit, December 8, 1937, the following Orders were entered:

ORDER FOR SUPERSEDEAS AS TO NOBLE'S MILK COMPANY.

December 8, 1937.

In the above-entitled cause it is

Ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of said preliminary injunction pending the decision on appeal therefrom, only in so far as it commands and directs and otherwise requires Noble's Milk Company to pay to the market administrator all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended, excepting from

this order of supersedeas payments due or to become due under Article 10, Section 1 of Order No. 4, upon condition that Noble's Milk Company file a bond in the sum of twenty-five thousand (25,000) dollars, conditioned as required by law, surety to be approved by the District Court for the District of Massachusetts.

GEORGE H. BINGHAM,
United States Circuit Judge.

ORDER FOR SUPERSEDEAS AS TO H. P. HOOD & SONS, INC.

December 8, 1937.

In the above-entitled cause it is

Ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of said preliminary injunction pending the decision on appeal therefrom only in so far as it commands and directs and otherwise requires the defendant-appellant H. P. Hood & Sons, Inc. to pay to the market administrator all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended, excepting from this order of supersedeas payments due or to become due under Article 10, Section 1 of Order No. 4, upon condition that the amounts of said payments now due and as they accrue from time to time shall be paid, to be held pending the final determination of this appeal and subject to the further order of the Circuit Court of Appeals for this Circuit into the registry of the District Court.

GEORGE H. BINGHAM,
United States Circuit Judge.

At the same term, to wit, December 23, 1937, the following Order Appointing Special Master was entered:

ORDER APPOINTING SPECIAL MASTER.

December 23, 1937.

[MEMORANDUM. The same order was entered in Equity Cases numbered 4519, 4520, 4521, 4522, 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4547, 4548, 4549 and 4550. JAMES S. ALLEN, *Clerk.*]

SWEENEY, J. It appearing to the court that special conditions so require, it is

Ordered that these causes be referred to William A. Loughlin, of Gardner, Massachusetts, as special master to hear the parties and their evidence and to make and report to the court his findings of fact.

It is further ordered that the special master proceed as expeditiously as practicable, and that said hearings shall begin January 4, 1938, at 10 A. M., and shall continue from day to day until completed; that he may sit anywhere within this district as he may determine, or elsewhere by consent of the parties; that his compensation shall be at the rate of one hundred dollars per day, said compensation and expenses to be paid by the parties in the proportions set forth in the stipulation herein filed this day.

By the Court:

JOHN E. GILMAN, JR.,
Deputy Clerk.

12-23-37

GEO. C. SWEENEY.

At the same term, to wit, December 30, 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that E. Frank Branon be allowed to intervene as party defendant.

Also at the same term, to wit, January 3, 1938, the following Answer of the Intervening Defendant, E. Frank Branon, was filed:

ANSWER OF THE INTERVENING DEFENDANT, E. FRANK BRANON.

[Filed January 3, 1938.]

1. This defendant admits the allegation in paragraph 1 of the bill of complaint that Henry A. Wallace is the Secretary of Agriculture of the United States, but is ignorant of the other facts alleged in said paragraph and leaves the plaintiffs to the proof of the same, if material.

2. This defendant admits the allegations in paragraph 2 of the bill of complaint.

3. This defendant has no knowledge of the facts alleged in para-

graph 2(a) of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.

4. This defendant admits the allegations contained in paragraph 3 of the bill of complaint.

5. This defendant admits the allegations contained in paragraph 4 of the bill of complaint.

6. This defendant has no knowledge of the facts alleged in paragraph 5 of the bill of complaint, but leaves the plaintiffs to proof of the same, if material.

7. This defendant admits the allegation contained in paragraph 6 of the bill of complaint that the Secretary of Agriculture issued an order regulating the handling of milk in the Boston Area, effective February 9, 1936, a copy of which order is annexed to the bill of complaint and marked "Exhibit B", but this defendant denies the remaining allegations contained in said paragraph 6 of the bill of complaint.

8. This defendant has no knowledge as to whether the purpose of said Order No. 4 is as stated in paragraph 7 of said bill of complaint, but he denies that said Order No. 4 has effected the purpose there alleged. And further answering this paragraph, this defendant says that said Order tends to lower and impair the price received by producers of milk who, by reason of geographical location and otherwise, are legitimately entitled to share in the fluid milk market in the Boston Area, and to depress the purchasing power of such producers; and that producers newly shipping milk into the Boston Area, as well as those who are not economically justified in seeking to ship milk into said area, are given an unfair equality with producers having established outlets for the sale of milk in said area.

9. This defendant has no knowledge of the facts alleged in paragraph 8 of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.

10. This defendant admits the allegations in paragraph 9 of the bill of complaint that said Order No. 4 was continuously in effect from the effective date thereof until August 1, 1936; that the Secretary of Agriculture purported to suspend the further operation of said Order on August 1, 1936; and that a copy of the order purport-

ing to suspend said Order No. 4 is attached to the bill of complaint, marked "Exhibit C". This defendant denies that the action of the Secretary suspended said Order No. 4, and says that said Order No. 4 was terminated on August 1, 1936.

11. Answering the allegations contained in paragraph 10 of the bill of complaint, this defendant admits that on June 25, 1937, the Acting Secretary of Agriculture purported to terminate the said order of suspension effective July 1, 1937, and that a copy of the order terminating the order suspending said Order No. 4 is attached to the bill of complaint marked "Exhibit D". And further answering the allegations contained in this paragraph, the defendant denies the authority of the Acting Secretary of Agriculture and the Secretary of Agriculture to reinstate Order No. 4, and says that said Order No. 4 had been terminated and abandoned, that during the period between August 1, 1936 and June 25, 1937, no attempt was made by the Secretary of Agriculture to enforce said Order No. 4, and that by June 25, 1937, said Order No. 4 had lapsed and was not capable of being reinstated.

12. This defendant denies the allegation contained in paragraph 11 of the bill of complaint that all interested parties were afforded an opportunity to be heard on the proposed amendment, and says that a large number of producers and a large number of handlers living in areas far removed from the places set for hearing were not afforded a fair opportunity to be heard on the proposed amendment. This defendant admits all the other allegations contained in paragraph 11 of the bill of complaint.

13. Answering the allegations contained in paragraph 12 of the bill of complaint, this defendant admits that the Secretary purported to issue an amendment to said Order No. 4, effective August 1, 1937, a copy of which Order, as amended, is attached to the bill of complaint and marked "Exhibit E". This defendant denies all the other allegations in paragraph 12 of the bill of complaint. And further answering, this defendant says that Order No. 4 was not in existence on August 1, 1937, and, therefore, could not be amended.

14. This defendant denies the allegations contained in paragraph 13 of the bill of complaint. This defendant is informed and believes

and, therefore, alleges that a substantial number of producers who had not complied with the health regulations applicable to milk sold for consumption in the Boston Area and who were not producers within the definition of "producer" contained in said Order No. 4 were permitted themselves to vote or to have votes cast in their behalf by cooperative associations claiming them as members; that notices to producers of the time, place and purposes of the referendum were inadequate in point of time; that the polling places designated for the referendum were inconvenient and inaccessible to a substantial number of producers; that in some instances the polling places were closed prior to the announced closing time; and that a substantial number of producers were not afforded a fair and reasonable opportunity to vote.

15. This defendant denies the allegations contained in paragraph 14 of the bill of complaint.

16. This defendant has no knowledge of the allegations contained in paragraph 15 of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.

17. Answering the allegations of paragraph 16 of the bill of complaint, this defendant admits that the defendant H. P. Hood & Sons, Inc. is engaged in the business of receiving, buying, processing, selling and distributing milk, and is a "handler" of milk as defined in the Act and in Order No. 4 as amended. This defendant denies the constitutionality and validity of the Act and of the Order, as amended, and denies that the defendant H. P. Hood & Sons, Inc. is subject thereto. This defendant has no knowledge as to the allegations contained in said paragraph of the bill of complaint as to the defendant Noble's Milk Company, and leaves the plaintiffs to proof of the same, if material.

18. Answering the allegations of paragraph 17 of the bill of complaint, this defendant admits the allegations contained in the first three sentences in said paragraph. As to the other allegations contained in said paragraph, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.

19. This defendant has no knowledge of the allegations contained

in paragraph 18 of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.

20. Answering the allegations of paragraph 19 of the bill of complaint, this defendant admits that milk is an article of diet which is of great importance to the public health, and that it is imperative that a reliable and adequate supply of milk be maintained. This defendant has no knowledge as to the remaining allegations in said paragraph, and leaves the plaintiffs to proof of the same, if material.

21. Answering the allegations of paragraph 20 of the bill of complaint, this defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. This defendant has no knowledge as to the remaining allegations contained in said paragraph, and leaves the plaintiffs to proof of the same, if material.

22. This defendant has no knowledge of the facts alleged in paragraph 21 of the bill of complaint and leaves the plaintiffs to proof of the same, if material.

23. This defendant admits the allegations contained in paragraph 22 of the bill of complaint, except as to the allegation that under the Order the blended price is the minimum price and handlers are permitted to pay producers more than the blended price. This defendant is ignorant as to whether the legal effect of the Order is to permit handlers to pay more than the blended price. This defendant is informed and believes and, therefore, alleges that the defendant H. P. Hood & Sons, Inc. is financially unable to pay to the producers more than the blended price if it is obligated to make the payments to the market administrator required under the provisions of the Order. This defendant further says that the blended price is in fact the maximum price, and that the effect of the Order has been and will be to impair and reduce the price which they receive for their milk.

24. This defendant admits the allegations contained in paragraph 23 of the bill of complaint. And further answering the allegations contained in said paragraph, this defendant says that for many years the proportion of Class I milk purchased by the defendant H. P. Hood & Sons, Inc. to the total milk purchased by it has been greatly

in excess of the proportion of Class I milk purchased by all handlers in the Greater Boston Marketing Area to the total milk purchased by all such handlers; that the defendant H. P. Hood & Sons, Inc. has similarly purchased a higher percentage of Class I milk during each delivery period from August 1, 1937 to October 15, 1937; that except for intervals when the defendant H. P. Hood & Sons, Inc. was required to purchase milk on the basis of prices determined by market wide equalzation either under Federal license or orders or due to the insistence of cooperative associations controlling practically all its supply of milk, it has in the past constantly paid prices to this defendant substantially in excess of the prices determined by market wide equalization; that the defendant H. P. Hood & Sons, Inc. has for many years insisted upon high quality and health standards in the production of milk sold it; and that this defendant has been under constant expense and effort to maintain such quality and health standards. This defendant further says that because of the fact that the defendant H. P. Hood & Sons, Inc. is a handler with relatively large Class I sales, under the terms of the Order it is required to pay to the market administrator moneys which it would otherwise pay to its own producers, including this defendant, and that, under the terms of the Order, such moneys will be distributed to other producers with whom the defendant H. P. Hood & Sons, Inc. and its producers, including this defendant, have no relations whatever, and who have not incurred the same effort and expense as this defendant in meeting the high quality and health standards imposed on its producers by the defendant H. P. Hood & Sons, Inc.

25. This defendant admits that the market administrator demanded payment from the defendant H. P. Hood & Sons, Inc., of the amounts set forth in paragraph 24 of the bill of complaint, and that the defendant H. P. Hood & Sons, Inc., has failed to pay said amounts to the market administrator. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts, and says that said Order No. 4 is valid and without force of law, that the Agricultural Adjustment Act, as amended, under the terms of which the Secretary of Agriculture purported to issue Order No. 4, as amended, is invalid and unconstitutional, and that the market admin-

istrator, in computing said amounts as to which demand for payment was made on H. P. Hood & Sons, Inc., included in the computation of the blended price milk which should not have been so included, excluded milk should have been included, and in other ways fell into error in making said computation. As to the other allegations in said paragraph 24, this defendant has no knowledge and leaves the plaintiffs to the proof of the same, if material.

26. This defendant has no knowledge as to the allegations contained in paragraph 25 of the bill of complaint.

27. This defendant admits the allegations contained in paragraph 26 of the bill of complaint.

28. This defendant admits that the market administrator demanded that the defendant H. P. Hood & Sons, Inc. pay to him amounts set out in paragraph 27 of the bill of complaint and that the said defendant has failed to pay said amounts. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts. As to the allegations contained in said paragraph 27 of the bill of complaint, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.

29. This defendant has no knowledge as to the allegations contained in paragraph 28 of the bill of complaint and leaves the plaintiffs to proof of the same, if material.

30. This defendant admits the allegations contained in paragraph 29 of the bill of complaint.

31. Answering the allegations contained in paragraph 30 of the bill of complaint, this defendant admits that in the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, the defendant H. P. Hood & Sons, Inc. purchased milk from producers who were not members of a cooperative association, that the market administrator demanded that the said defendant pay to him the amounts set out in paragraph 30 of the bill of complaint and that said defendant has failed to pay said amounts. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts. As to the other allegations contained in said paragraph 30, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material. And further answering the allegations con-

tained in said paragraph 30, this defendant says that he is a producer who is not a member of a cooperative association as defined in said Order as amended; that in the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, he sold milk to the defendant H. P. Hood & Sons, Inc.; that the said defendant in making payments to them for milk sold during such delivery periods deducted the amount of two cents per hundredweight as provided in section 10, Article IX of said Order as amended. This defendant further says that the market administrator supplied no information and rendered no valuable services to him; that said Order, under which such deductions were made, is invalid and without force of law, that the Agricultural Adjustment Act as amended, under the provisions of which the Secretary of Agriculture purported to issue said Order is invalid and unconstitutional, and that the provisions for said deductions contained in said Order deprive him of his property without due process of law.

32. As to the allegations contained in paragraph 31 of the bill of complaint, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.

33. This defendant denies all the allegations contained in paragraph 32 of the bill of complaint.

34. And further answering this defendant says: This defendant is engaged in the business of producing milk and has been so engaged for many years. Since August 1, 1937, he has been and is now continuing to sell and deliver milk to the defendant H. P. Hood & Sons, Inc. and has every reasonable expectation of continuing his present business relations with said defendant and of selling and delivering milk to said defendant in the future. Since August 1, 1937, he has sold and delivered milk to said defendant under the terms and conditions of a plant notice posted by said defendant for each delivery period, in which plant notice said defendant agreed to pay for milk delivered to it a guaranteed minimum price, but reserved the authority to deduct from payments made for milk so delivered each producer's proportionate part of any sums which said defendant is legally required to pay to the market administrator. Said prices have been, and this defendant is informed and believes and, therefore, avers that

they will continue to be, in excess of the ce computed by the market administrator for the Boston Area. In ccordance, as it claims, with the terms of the agreement contained in said plant notices the defendant H. P. Hood & Sons, Inc. has not paid to this defendant, in respect of milk delivered since August 1, 1937, the guaranteed minimum price set out in said plant notices but has deducted from said guaranteed price a sum which it claims is a proportionate part of the sum demanded from it by the market administrator under the terms and provisions of said Order No. 4 as amended.

Because of the invalidity of said Order No. 4, as amended, and the Agricultural Adjustment Act, as amended, under the provisions of which said Order was purported to be issued, the defendant H. P. Hood & Sons, Inc. is not legally obligated to pay to the market administrator the sums deducted from amounts due to this defendant for milk sold by him after August 1, 1937, and this defendant is entitled to the amounts so deducted.

And further answering this defendant says: Said Order No. 4 was and is wholly null and void and of no effect for the reasons set out in paragraphs 13 and 14 of this answer, and that the Agricultural Adjustment Act as amended, under and by virtue of which the Secretary of Agriculture purported to issue said Order No. 4 as amended, is invalid and unconstitutional and beyond the powers conferred upon the Congress of the United States by the Constitution, in that: (a) Regulation of prices paid for milk to producers is not within the power granted to Congress by Article I, section 8 of the Constitution; (b) said Act is an attempt on the part of Congress to exercise powers which were reserved to the States by the Tenth Amendment to the Constitution; (c) the provisions of the Act are in violation of the Fifth Amendment of the Constitution of the United States and deprive the defendant H. P. Hood & Sons, Inc. and this defendant of their property without due process of law; (d) said Act delegates to an administrative officer legislative powers in violation of the Constitution of the United States; and (e) said Act delegates to private citizens legislative powers in violation of the Constitution of the United States.

Wherefore this defendant prays that the temporary and permanent

relief sought in the bill of complaint be denied and that the bill of complaint be dismissed.

MERRILL & MERRILL,
ROY M. FITZMORRIS,
Solicitors for the Intervening Defendants.

This cause was thence continued from term to term to the present December Term, A. D. 1938, when, to wit, January 27, 1939, the following Report of the Special Master is filed:

REPORT OF THE SPECIAL MASTER.
[Filed January 27, 1939.]

[MEMORANDUM. Here is inserted in this Transcript of Record report of the special master, comprising Volumes II and III. JAMES S. ALLEN, *Clerk.*]

On the twenty-eighth day of January, A. D. 1939, the following Plaintiffs' Proposed Conclusions of Law are presented together with Defendants' and Intervenor's Requests:

PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW.
Presented January 28, 1939.

Now come the plaintiffs in the above-entitled cause and request this court to adopt the following conclusions of law:

JURISDICTION.

1. This court has jurisdiction of this cause by reason of Section 8a (6) of the Agricultural Marketing Agreement Act of 1937 (Act of May 12, 1933, 48 Stat. 31; 7 U. S. C. A. Sect. 608a (6), as amended August 24, 1935, 49 Stat. 672, and as reenacted and amended June 3, 1937, c. 296, 50 Stat. 246).

THE CONSTITUTIONALITY OF THE AGRICULTURAL MARKETING AGREEMENT ACT.

2. The Agricultural Marketing Agreement Act of 1937 was enacted by Congress in pursuance of the power granted to it by Section I, Article VIII, Clause 3 of the Constitution to regulate commerce with

foreign nations and among the several states, and the Act is a valid exercise of that power.

3. The power of Congress to regulate commerce among the several states includes the power to regulate the price of milk which is sold or which moves in interstate commerce. The power to regulate interstate commerce also includes the power to regulate the price of milk which is sold or which moves in intrastate commerce where such milk is a part of the current of interstate commerce, or where the sale or movement of such milk is inextricably intermingled with the sale or movement of milk in interstate commerce or where such regulation is appropriate and necessary to make effective the regulation of milk sold or moving in interstate commerce, or to prevent undue and burdensome discrimination against milk moving in interstate commerce.

4. The power of Congress to regulate interstate commerce includes the power to regulate the price which is to be paid producers for milk produced outside the Commonwealth of Massachusetts and transported in interstate commerce into the said Commonwealth for use or disposition in the Greater Boston Marketing Area or elsewhere in the said Commonwealth. The purchase or receipt of milk at points outside the Commonwealth of Massachusetts for transportation in interstate commerce to points within the said Commonwealth is a purchase or receipt in interstate commerce and as such is subject to the regulatory power of Congress. The purchase or receipt within the Commonwealth of Massachusetts of milk which has been transported in interstate commerce into the said Commonwealth is a purchase or receipt in the current of interstate commerce and as such is subject to the regulatory of Congress.

5. Milk which is purchased or received from producers located within the Commonwealth of Massachusetts and sold and distributed in the Greater Boston Marketing Area becomes a part of the stream of interstate commerce in milk and its products; the sale and distribution of the milk is inextricably related to the sale and distribution of milk which moves in interstate commerce into the Boston market. The handling of such milk directly affects interstate commerce in milk in the Boston market; and the regula-

tion of the price paid to producers for such milk is appropriate and necessary to make effective the regulation of the prices paid for the milk which moves in interstate commerce into the Boston market, and to prevent undue and burdensome discrimination against interstate commerce in milk in the Boston market. It follows that the power of Congress to regulate the price paid to producers for milk which moves in interstate commerce into the Greater Boston Marketing Area includes the right to regulate the price paid to producers for milk produced within the Commonwealth of Massachusetts and sold and distributed in the Boston market.

6. The constitutional power of Congress to regulate prices, as exercised in the Agricultural Marketing Agreement Act of 1937, includes the power to provide an equitable method for the distribution of the proceeds of those prices among the persons entitled thereto. It follows that the provisions of the Agricultural Marketing Agreement Act of 1937 providing for the payment of uniform prices to all producers and associations of producers delivering milk to handlers for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, and the other provisions of the Act which authorize market-wide equalization, are a valid and legitimate exercise of the power of Congress to regulate interstate commerce.

7. The provisions of the Agricultural Marketing Agreement Act of 1937 as applied to the defendants herein do not deprive the said defendants of life, liberty, or property, and do not violate the due process clause of the Fifth Amendment.

8. The provisions of the Agricultural Marketing Agreement Act of 1937, as applied to the intervenor herein, do not deprive him of life, liberty, or property, and do not violate the due process clause of the Fifth Amendment.

9. The provisions of the Agricultural Marketing Agreement Act of 1937 provide for the fixing of minimum prices, and impose no legal prohibition on or penalty for the payment of prices higher than the minimum prices so fixed. Hence, no legal issue of confiscation can be raised by the operation of these provisions.

10. The powers vested in the Secretary of Agriculture by the

Agricultural Marketing Agreement Act of 1937 as invoked by the Secretary in this case are accompanied by a prescription in the Act of subject matter, policy, standards, and limitations upon, for, by, and in accordance with which such powers are to be exercised together with a requirement of requisite findings of fact by the Secretary precedent to the exercise of such powers and all of such powers were validly conferred by the Congress upon the Secretary of Agriculture and do not constitute an unlawful delegation of legislative authority to him.

11. The provisions of Section 8c (9) of the Act requiring the Secretary to find that at least two-thirds of the producers who, during a representative period, had been engaged in the production for market of the commodity specified favored the issuance of the order before issuing any order do not violate the due process clause of the Fifth Amendment and do not constitute a delegation of legislative power to producers.

THE VALIDITY OF THE ISSUANCE AND AMENDMENT OF ORDER No. 4.

12. The action of the Secretary of Agriculture on January 25, 1936, in finding and proclaiming that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area the purchasing power of such milk during the base period August 1909 to July 1914 could not be satisfactorily determined from the available statistics in the Department of Agriculture but that the purchasing power of such milk could be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929 and that the period August 1919 to July 1929 should be the base period to be used in connection with the aforesaid marketing agreement and order, was a valid and lawful exercise of the authority conferred on the said Secretary of Agriculture by the Agricultural Adjustment Act, as amended.

13. Order No. 4 regulating the handling of milk in the Greater Boston Massachusetts Marketing Area was duly issued by the Secre-

tary of Agriculture on February 7, 1936, in compliance with and in conformity to the applicable terms and provisions of the Agricultural Adjustment Act as amended, after notice of hearing on the proposed order, public hearings thereon, findings of fact, and determinations by the said Secretary, and approval by the President of the United States, as required by the said Act, and the issuance of the said order was a lawful exercise of the authority conferred on the said Secretary by the said Act.

14. The findings made by the Secretary of Agriculture and set forth in the said Order No. 4 were supported by substantial evidence adduced at public hearings held prior to the making of the said findings and the issuance of the said order.

15. The said Order No. 4 contained terms and conditions prescribed by the Agricultural Adjustment Act as amended, and no others.

16. Pursuant to and in lawful exercise of the authority vested in him by the Agricultural Adjustment Act, as amended, the Secretary of Agriculture on August 1, 1936, suspended Order No. 4 regulating the handling of milk in the Greater Boston Massachusetts Marketing Area.

17. Pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture on June 25, 1937, terminated the suspension of Order No. 4 the said termination of suspension being effective as to part of Order No. 4 as of July 1, 1937, and as to the remainder of Order No. 4 as of August 1, 1937. The said termination of suspension was a lawful exercise of the authority conferred upon the said Secretary by the Agricultural Marketing Agreement Act of 1937.

18. Pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937 the Secretary of Agriculture on July 28, 1937, issued an amendment to Order No. 4 regulating the handling of milk in the Greater Boston Massachusetts Marketing Area which became effective on August 1, 1937, and which has been continuously in effect at all times since that date.

19. The amendment to Order No. 4 was duly issued by the Secretary of Agriculture in compliance with and in conformity to the appli-

cable terms and provisions of the Agricultural Marketing Agreement Act of 1937 after notice of hearing on a proposed amendment to Order No. 4, public hearings thereon, and findings of fact and determinations by the Secretary, and approval by the President of the United States, as required by the said Act, and the issuance of the said amendment to the said Order was a lawful exercise of the authority conferred upon the said Secretary by the Agricultural Marketing Agreement Act of 1937.

20. The findings made by the Secretary and set forth in the order amending Order No. 4 were supported by substantial evidence adduced at public hearings held prior to the making of such findings and the issuance of the said order.

21. The findings so made by the Secretary and set forth in the said order amending Order No. 4 were in addition to the findings made upon the evidence introduced at the hearings held prior to the issuance of Order No. 4 and the said original findings were ratified and approved by the Secretary at the same time that he issued the said order amending Order No. 4 except insofar as such original findings were in conflict with the findings made by the Secretary and set forth in the said order amending Order No. 4.

22. The applicable provisions of the Agricultural Marketing Agreement Act of 1937 did not require the Secretary of Agriculture to find and proclaim again, in connection with the issuance of the order amending Order No. 4, that the purchasing power of milk handled in the Greater Boston Marketing Area could not be satisfactorily determined from available statistics of the United States Department of Agriculture during the base period August, 1909 to July, 1914, but that the purchasing power of said milk could be satisfactorily determined from available statistics of the Department of Agriculture during the base period August, 1919 to July, 1929 and that the period August, 1919 to July, 1929 should be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston Marketing Area.

23. Order No. 4 as amended contains terms and conditions prescribed by the Agricultural Marketing Agreement Act of 1937 and no others.

24. Order No. 4 and each of its terms and conditions is a constitutional and lawful regulation of the handling of milk in the Greater Boston Massachusetts Marketing Area; a constitutional and lawful exercise of the power vested in Congress to regulate commerce among the several states; and a lawful exercise of the authority conferred upon the Secretary of Agriculture by the said Agricultural Marketing Agreement Act of 1937.

25. Order No. 4, as amended, as applied to the defendants herein has not deprived and will not deprive them of life, liberty, or property without due process of law, and has not violated the due process clause of the Fifth Amendment.

26. Order No. 4, as amended, as applied to the intervenor herein has not deprived and will not deprive him of life, liberty, or property without due process of law, and has not violated the due process clause of the Fifth Amendment.

THE ADMINISTRATION OF ORDER NO. 4 AS AMENDED.

27. S. W. Tator was duly appointed market administrator under Order No. 4 as amended by the Secretary of Agriculture and the said appointment was a lawful exercise of the authority conferred on the said Secretary by the Agricultural Marketing Agreement Act of 1937 and was made pursuant to the provisions of Order No. 4 as amended.

28. In computing the Class II price for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the directions contained in Section 3 of Article IV of Order No. 4 as amended.

29. In computing the butterfat differential for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the directions contained in Section 3 of Article VIII of Order No. 4 as amended.

30. In computing the blended price for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the provisions of Order No. 4 as amended.

31. In determining what milk should be included and what milk excluded in the computation of the blended price for each delivery

period from August 1, 1937, to and including December 31, 1937, the market administrator acted in compliance with the provisions of Order No. 4 as amended. The adjustments made by the market administrator, as described in paragraphs 184 to 187 of the master's report, to charge back to certain handlers milk reported by the said handlers which had theretofore been included in the computation of the blended price for certain delivery periods, were made in compliance with the provisions of Order No. 4. In the case of the Wells River and Salisbury plants of New England Dairies, Inc., which were included in the computation of the blended price for each delivery period between August 1, 1937 and December 31, 1937, it appears that no similar adjustment has been made. It further appears, however, that in certain delivery periods these plants shipped no milk or cream into the Boston Marketing Area. The market administrator therefore should make such an adjustment to charge back to New England Dairies the milk received at the Wells River plant in the delivery periods of August 1–15 and August 16–31, 1937, when the plant shipped no milk or cream into the Boston market. The market administrator should likewise make a similar adjustment to charge back to New England Dairies the milk received at the Salisbury plant in the delivery periods September 16–30 and December 16–31, 1937, when that plant shipped no milk or cream into the Boston market. In the case of both plants the adjustments should be made in the manner described in paragraphs 184 to 187 of the master's report.

32. The master's report shows that the market administrator concluded that during certain delivery periods the Hoosick, Irona, and Cummings plants of New England Dairies, Inc. were not licensed for the shipment of fluid milk by any of the cities or towns in the marketing area. He, therefore, made adjustments to charge back to New England Dairies, Inc. any milk which it reported as having been received at these plants and which had been included in the computation of the blended price for any delivery period prior to this conclusion. In each delivery period after this conclusion the market administrator also excluded from the computation of the blended price all milk reported by New England Dairies, Inc. as having been received at these plants. It now appears from the master's report

that in fact New England Dairies was licensed by the City of Somerville to sell and distribute fluid milk received by New England Dairies, Inc. at all of its plants, including its plants at Hoosick, Cummings, and Irona. The fluid milk received by New England Dairies, Inc. at its Hoosick, Irona, and Cummings plants should not have been excluded from the computation of the blended price in any delivery period on the sole ground that New England Dairies, Inc. was not licensed by any local health authority in the marketing area to sell and distribute fluid milk from those plants. The market administrator, therefore, should make such adjusting entries on his books and take such other steps as may be necessary to include in the accounts of New England Dairies, Inc. all of the milk received by New England Dairies, Inc. at its plants at Irona, Cummings, and Hoosick, in each of the delivery periods from August 1, 1937, to and including December 31, 1937, in which the plant in question shipped any milk or cream into the marketing area.

33. Under Order No. 4, as amended, the cost of the milk received by the defendants herein, and by any other handler in each delivery period, is determined by multiplying the amount of milk so received by the minimum prices fixed by Article IV of the Order. The equalization payments required to be made by Paragraph 3 of Section 1 of Article VIII of Order No. 4, as amended, do not increase or otherwise affect the cost of a handler's milk but are only a method by which the total value of all the milk in the equalization pool is distributed among all producers participating in the pool. The blended price is a factor in determining the amount of the equalization payments made by each handler, but not a factor in determining the cost of milk to each handler. It follows that neither the manner of computing, nor the amount of milk excluded or included in the computation of the blended price can inflict any legal injury upon the defendants or any other handlers and neither the defendants herein nor any other handler have a legal interest which entitles them to attack the manner of computing the blended price, or action taken in excluding or including milk in that computation.

34. The method used by the market administrator in computing a

bill and statement for each of the defendants herein for each delivery period from August 1, 1937, to and including December 31, 1937, complied with the provisions of Order No. 4, as amended. The adjustments made by the market administrator in the bills rendered to the defendants herein for certain delivery periods were likewise made in compliance with the provisions of Order No. 4, as amended. The amounts billed by the market administrator to H. P. Hood & Sons, Inc., as charges to its producer settlement account, which are set forth in the table contained in paragraph 236 of the master's report, are now due and owing by the said H. P. Hood & Sons, Inc. The amounts billed by the market administrator to Noble's Milk Company, as charges to its producer settlement account, which are set forth in the table contained in paragraph 236 of the master's report, are now due and owing by the said Noble's Milk Company.

35. For each delivery period since August 1, 1937, the market administrator should recompute a blended price using the same class prices that were used in making the original computation for each such delivery period, and using the same method of computation which was used in making the original computation for each such delivery period except that in any instance in which that method is inconsistent with the views expressed in these conclusions of law, the market administrator shall adopt a method of computation consistent with the views expressed herein. For the purpose of this recomputation, the market administrator shall for each delivery period use the reports of the defendants herein and of any other handlers of milk in the Boston market which are available to the market administrator, provided that the defendants herein and the said other handlers shall have paid to the market administrator at the time of the said recomputation the amounts shown in the bills rendered to them by the market administrator as due and owing by reason of charges against their producer settlement accounts for the particular delivery period in question.

36. The determination made by the market administrator that 2 cents per hundredweight should be deducted by each handler from the payments made to producers, not members of a cooperative association qualified under the Capper-Volstead Act, and the amount of such

deductions paid to the market administrator, to be used by him to provide certain marketing services for producers was made pursuant to authority conferred on the market administrator by Article IX of Order No. 4, as amended, and was a lawful and proper exercise of that authority. The method used by the market administrator to compute the amount to be deducted by the defendants herein in each delivery period between August 1, to and including December 31, 1937, and paid to the market administrator for use in providing the said marketing services, complied with the said provisions of Article IX of Order No. 4, as amended. The amounts so computed by the market administrator with respect to H. P. Hood & Sons, Inc., shown in the table contained in paragraph 237 of the master's report under the heading "Marketing Service" are now due and owing with respect to each of the said delivery periods. The amount so computed by the market administrator with respect to Noble's Milk Company, shown in the table contained in paragraph 237 of the master's report under the heading "Marketing Service" is now due and owing with respect to each of the said delivery periods.

37. Inasmuch as the deduction of 2 cents per hundredweight, referred to in paragraph 36 above, is made from amounts paid directly to producers and is not a charge on the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company, the said defendants have suffered no legal injury by reason of the said deduction and have no legal interest which entitles them to complain of or to attack the said deduction.

38. The determination made by the market administrator that each handler should pay to the market administrator 2 cents per hundredweight with respect to all milk delivered to him during each delivery period by producers, or produced by him, to be used by the market administrator to pay the pro rata share of the expense of the administration of Order No. 4, as amended, was made pursuant to authority conferred upon the market administrator by Article X of Order No. 4, as amended, and was a lawful and proper exercise of that authority. The method used by the market administrator to compute the amounts owing by each of the defendants herein in each of the delivery periods from August 1, 1937, to and including December 31, 1937, as its pro-

rata share of the expense of the administration of Order No. 4, as amended, complied with the said provisions of Article X of the said Order. The amount so computed as owing by H. P. Hood & Sons, Inc. for each such delivery period shown in paragraph 239 of the master's report has been paid by H. P. Hood & Sons, Inc. to the market administrator pursuant to the interlocutory decree entered herein by this court. The said payments so made to the market administrator discharged an obligation imposed by the provisions of Order No. 4, as amended. The amount so computed as owing by Noble's Milk Co. for each such delivery period shown in paragraph 239 of the master's report has been paid by Noble's Milk Co. to the market administrator pursuant to the interlocutory decree entered herein by this court. The said payments so made to the market administrator discharged an obligation imposed by the provisions of Order No. 4, as amended.

THE DEFENDANTS.

39. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Company are handlers as defined in Order No. 4, as amended, and are subject to the provisions of the said order, and of the Agricultural Marketing Agreement Act of 1937.

40. Both H. P. Hood and Sons, Inc. and Noble's Milk Company are engaged in purchasing, receiving, and handling milk in interstate commerce. In addition to these activities, each of the said defendants also receives and sells in the Commonwealth of Massachusetts a certain amount of milk which is produced on farms located within the said Commonwealth. The receipt and handling of the milk so received by the said defendants in the Commonwealth of Massachusetts directly affects interstate commerce and is closely and inextricably related to the interstate commerce in milk, carried on by both of the said defendants. Regulation of the intrastate transactions of the said defendants in milk is necessary if regulation of their interstate transactions is to be effective.

THE INTERVENOR.

41. If any contractual rights are conferred upon the intervenor by the plant notices under which the intervenor has delivered milk to

the plant of H. P. Hood and Sons, Inc. at Fairfield, Vermont, in each delivery period from August 1, 1937 to and including December 31, 1937, those contractual rights came into existence after the date on which Order No. 4, as amended, became effective and after the date on which the Agricultural Marketing Agreement Act of 1937 became effective. It follows that neither Order No. 4, as amended, nor the Agricultural Marketing Agreement Act of 1937 has impaired or abrogated any existing contractual rights of the intervenor.

42. The terms and provisions of the said plant notices do not impose any binding legal obligation upon H. P. Hood and Sons, Inc. to pay any amounts of money to the intervenor in the event that either Order No. 4, as amended, or the Agricultural Marketing Agreement Act of 1937 is held to be illegal or unconstitutional.

43. Even if it is assumed, however, that the said plant notices impose a binding legal obligation upon H. P. Hood & Sons, Inc. to pay certain sums of money to the intervenor in the event that either Order No. 4, as amended, or the Agricultural Marketing Agreement Act is held to be illegal or unconstitutional, that circumstance does not give the intervenor any legal interest which has been or will be injured or impaired by the enforcement of Order No. 4, as amended, or the said Act.

44. The intervenor has no legal interest which entitles him to intervene in this cause or which has been or will be injured or impaired by the enforcement of Order No. 4, as amended, or the Agricultural Marketing Agreement Act of 1937.

Conclusions.

45. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Co. have violated the provisions of Order No. 4, as amended, and the Agricultural Marketing Agreement Act of 1937 by failing and refusing to make the payments required by the said Order and the said Act.

46. The plaintiffs are entitled to a permanent injunction requiring the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company to comply with all the provisions of Order No. 4, as amended.

47. The petition of the intervenor for leave to intervene in this cause should be dismissed.

Respectfully submitted,

HUGH B. COX,
JAMES C. COX,
Special Asst's to Attorney General.
JOHN A. CANAVAN,
United States Attorney.

[MEMORANDUM. The defendants' requests also applied to equity cases numbered 4520, 4521, 4522, 4529, 4530, 4539, 4540, 4543, 4544 and 4550. JAMES S. ALLEN, *Clerk.*]

DEFENDANTS' REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Presented January 28, 1939.

Request 1. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 is an unconstitutional delegation to the Secretary of Agriculture of the legislative power conferred upon the Congress in Article I, Section 1, and Article I, Section 8, paragraph 8 of the Constitution.

Request 2. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 deprives these defendants of their property without due process of law, contrary to the Fifth Amendment, by delegating legislative power to a group of private persons, representing only a portion of the industry affected, who may exercise it arbitrarily.

Request 3. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937, as interpreted by the Secretary in promulgating the amended order, deprives these defendants of their property, without due process of law, contrary to the Fifth Amendment, by delegating to a small group of officials managing cooperative associations the power to make effective an order binding all handlers and producers.

Request 4. The defendants who are handlers have a real and genuine interest in the sums demanded under Article VIII, Section 1.

paragraph 3 of the amended order. The blended price announced by the administrator under Article VII of the Order is the price fixed by Congress. The so-called "Minimum prices" fixed by Article IV of the Order are merely the formula by which the blended price is determined. The price of a commodity is the consideration paid by the purchaser to the seller for the transfer of title. The additional amounts, payments of which are here sought under the guise of equalization payments, marketing services and administration expense, are not in any true legal sense component parts of the blended price.

Request 5. Sections 8c (5) (B) (ii) and 8c (5) (C) of the Act as applied by Order No. 4, as amended, deprive these defendants of property without due process of law in violation of the Fifth Amendment to the Constitution.

Request 6. Sections 8c (5) (B) (ii) and 8c (5) (C) of the Act as applied by Order No. 4, as amended, take the property of these defendants without just compensation in violation of the Fifth Amendment to the Constitution.

Request 7. The Act is not an attempt to regulate interstate commerce but it is an attempt to fix prices to be paid to farmers, a power reserved to the States under the Tenth Amendment.

Request 8. Fixing prices of articles purchased for shipment in interstate commerce is not a regulation of interstate commerce within the power granted by the commerce clause of the Constitution but is a power reserved to the States under the Tenth Amendment.

Request 9. Order No. 4, as amended, is invalid because there was no valid order subsisting which could be amended.

Request 10. Original Order No. 4 was invalid because the Secretary did not comply with the provisions of the Act with respect to matters precedent to the issuance of such Orders or with the regulations of the Department of Agriculture governing the holdings of hearings and the issuance of such an order in each of the following respects:

(a) The notice of public hearing on proposed Order No. 4 was invalid.

(b) The hearing held in pursuance thereto was not in accordance with the regulations and was not in accordance with the requirements of "due process" of the Fifth Amendment.

(c) The Secretary did not properly make the findings which were a necessary condition precedent to tentative approval of Order No. 4.

Request 11. The provisions of the original Order No. 4 were not supported by evidence properly adduced at the hearings.

Request 12. The purported suspension of Order No. 4 was in fact and in law a termination thereof.

Request 13. The purported termination of the order suspending Order No. 4 was invalid and void for each of the following reasons:

(a) Because the Secretary failed to hold hearings and to make findings with respect to the same.

(b) Because the "termination of suspension" was not authorized by Section 8c (16) (A).

(c) Because the reinstatement of only a part of the original Order was an invalid proceeding.

(d) Because the procedure as to the provisions which the Secretary purported to amend and make effective August 1, 1937 was invalid.

Request 14. The notice of public hearing on the proposed amendments was invalid.

Request 15. The admission of further evidence after the hearings on the amendments had closed and without affording defendants an opportunity to cross-examine or to meet it, and the introduction of the record of the hearing held on original Order No. 4 deprived the defendants of the hearing granted by sections 8c (3) and 8c (4) of the Act, and renders void the findings of the Secretary and the amendments issued on the basis thereof.

Request 16. The Secretary did not make the findings which were a necessary condition precedent to the tentative approval of the Amended Order.

Request 17. The provisions of the Amended Order are not supported by evidence properly adduced at the hearings.

Request 18. The Secretary took the post-war period, August, 1919 to July, 1929 as the base period for the purposes of the amendment to Order No. 4.

Request 19. In February, 1937 and thereafter there were available to the Secretary statistics of the Department of Agriculture from which the purchasing power of milk in the pre-war base period could have been satisfactorily determined. A contrary finding by the Secretary would have been arbitrary, unreasonable and unsupported by any facts.

Request 20. The Secretary had no power under the Act to take the period August, 1919 to July, 1929 as the base period for the purposes of the amendments to Order No. 4 because he did not find and proclaim in connection with issuance of the Order amending Order No. 4 that the purchasing power of milk during the base period August, 1909 to July, 1914 could not be satisfactorily determined from available statistics of the Department of Agriculture.

Request 20*a*. Under Section 8c (17) of the Agricultural Marketing Agreement Act of 1937 the Secretary of Agriculture is required in connection with the issuance of amendments to an order regulating the handling of milk, if said amendments are based upon the post-war period, August, 1919–July, 1929, to make the finding and proclamation required by Section 8e of the Act, to wit: That the purchasing power of milk during the pre-war base period, August, 1909–July, 1914, "cannot be satisfactorily determined from available statistics of the Department of Agriculture". Section 8c (16) (C) is irrelevant here because it refers only to the termination or suspension of amendments to orders. The amendments to Order No. 4 issued in July, 1937, are invalid because the required finding was not made.

Request 21. The Amended Order is invalid because the Secretary's determination that the amendments were approved by more than two-thirds of the producers producing milk or its products for sale in that marketing area was arbitrary, unreasonable and based upon errors of law.

Request 22. The referendum was invalid because all producers whose milk was sold in the marketing area were entitled to vote

under the provisions of the Act and a decisive number of such producers were given no opportunity to participate in the referendum.

Request 23. The referendum was invalid because producers who delivered to stations which shipped nothing but cream to the marketing area were permitted to vote in the referendum and their votes were considered in determining the number of producers in favor of amendments.

Request 24. The referendum was invalid because many votes were counted on behalf of farmers who were not producing and delivering milk to handlers in conformity with the health regulations applicable to milk which was sold for consumption as milk in the marketing area.

Request 25. The referendum is invalid because a large number of votes were counted on behalf of producers who were not engaged in the production of milk for sale in the marketing area during May, 1937, the representative period chosen by the Secretary.

Request 26. The decisive numbers of votes cast for the members by the boards of directors of New England Milk Producers Association and New England Dairies, Inc. should have been eliminated from the referendum because the sentiment of the cooperatives could be expressed in accordance with law only by a majority of the members.

Request 27. The decisive numbers of votes cast for the members by the board of directors of New England Dairies, Inc. and its member cooperatives should have been eliminated from the referendum because the sentiment of the cooperative could be expressed in accordance with law only by a majority of the members.

Request 28. The Order is invalid in that the prices fixed therein and calculated pursuant thereto have no substantial tendency to achieve the purpose and policy of the Act.

Request 29. The Amended Order is not authorized by the Act because it purports to regulate intrastate as well as interstate provisions.

Request 30. The provision in the Amended Order for the exclusion, in the computation of the blended price, of milk of handlers who have not made equalization payments for the delivery period

next preceding but one (Article VII, Section 2, par. 1) is not in accordance with nor authorized by the Act.

Request 31. The following provisions contained in the Amended Order are invalid because not in accordance with nor authorized by the Act:

(a) The definition of "handler" contained in Article I, Section 1, Paragraph 6, is not in accordance with nor justified by the provisions of Section 8c (1) of the Act.

(b) The definition of "producer" in Article I, Section 1, Paragraph 5, is not in accordance with nor justified by any provision of the Act.

(c) The designation of a market administrator as set forth in Article II is not such selection by the Secretary of Agriculture of the agency or agencies as is provided for in Section 8c (7) (C) of the Act.

(d) The classification of milk as set forth in Article III is not such classification as is justified by the provisions of Section 8c (5) (A).

(e) The prices set forth in Article IV, Sections 1 and 2, are not such prices as are provided for in Section 8c (5) of the Act.

(f) The prices provided for in Article IV, Sections 1 and 2, are discriminatory as between associations of cooperatives and proprietary handlers, and by reason thereof are not in accordance with the provisions of Section 8c (5) (A).

(g) The Class II prices as provided for in Article IV, Section 3, are not such minimum prices as are provided for in Section 8c (5) (A).

(h) The prices provided for in Article IV, Section 4, for sales outside the marketing area are beyond any authority conferred by Section 8c (5) (A) of the Act.

(i) The provisions of Article VII, Sections 1, 2 and 3, are not a provision

"for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered irrespective of the uses made of such milk

by the individual handler to whom it is delivered; subject in every case only to adjustments for

a. Volume, market, and production differentials customarily applied by the handlers subject to such order,

b. The grade or quality of milk delivered,

c. The locations at which delivery of such milk is made"

in accordance with the provisions of Section 8c (5) (B) (ii).

(j) The provisions of Article VIII, Section 4, paragraphs 3 and 4 are not such location differentials as are provided for in or justified by the provisions of Section 8c (5) (D) (ii).

(k) The provisions of Article X, Sections 1 and 2, are not in accordance with nor justified by any provision of Section 8c (5).

(l) The provisions of Article VII, Section 3, and of Article VII, Section 2, paragraphs and 6, are not in accordance with nor justified by any provision of the Act.

Request 32. The plaintiffs are not entitled to recover the sums demanded or any sum, under Article VIII, Section 1, par. 3 of the Amended Order for any delivery period for which the administrator erroneously computed the blended price.

Request 33. The inclusion, in the computation of the blended price, of milk of producers not having certificates of registration issued pursuant to Sections 16A–16C of Chapter 94 of the General Laws of Massachusetts was improper and not in accordance with the provisions of the Amended Order.

Request 34. The inclusion in the computation of the blended price for certain delivery periods from August 1, 1937 to November 16, 1937 of milk received by New England Dairies, Inc. at country plants not approved by any of the cities or towns in the marketing area was improper and not in accordance with the provisions of the Amended Order.

Request 35. The milk of handlers who made the payments required under Article VIII, Section 1, par. 3 of the Amended Order were improperly excluded from the computation of the blended price.

Request 36. The milk reported by New England Dairies, Inc. was

erroneously included in computing the blended prices for the delivery periods commencing September 1, 1937 and ending December 31, 1937.

Request 37. The milk reported by New England Dairies, Inc. was erroneously included in computing the blended prices for the delivery periods September 1–15, 1937 and September 16–30, 1937.

Request 38. The market administrator erroneously included in his computations the milk reported by cooperative associations qualified under the Act of February 18, 1922, known as the "Capper-Volstead Act".

Request 39. The administrator improperly included in his computations for the August, September and October periods as Class II milk, milk including skim milk sold by a handler to another handler or to a person who is not a handler who distributes milk or manufactures milk products, where such selling handler had not on or before the fifteenth day after the end of the delivery period, during which such sale was made, furnished proof satisfactory to the market administrator in support of its notification that such milk had been sold or used by such purchaser other than as Class I milk as provided by Article III, Section 2 of the Order.

Request 40. The market administrator erroneously excluded the western milk shipped into and sold as cream in the marketing area.

Request 41. The market administrator erroneously excluded in his computations for each delivery period plants shipping only cream into the marketing area.

Request 42. The market administrator erroneously included in the computation all the milk received at plants shipping less than 50 percent of their total receipts into the marketing area.

Request 43. The administrator erroneously computed the blended price for the August 1–15, August 15–31, September 15–30 and December 15–31 periods by including milk delivered to plants from one or more of which no milk or cream was shipped to the marketing area in each of the aforesaid delivery periods.

Request 44. The administrator improperly included in his computations the value of milk and of uniform prices under the provision of Article VII milk received by handlers which was sold or used in areas

outside the Greater Boston Massachusetts Marketing Area, as defined in the Order, Article I, Section 1, par. 3.

Request 45. The errors made in any given period resulted in errors in every alternate subsequent delivery period.

Request 46. The adjustments made by the market administrator did not cure the errors he had made in computing the blended price so far as they affect the obligations of the defendants.

Request 47. That the purported deduction under the terms of Article IX for moneys which shall be expended for market information and for verification of weights, sampling and testing of milk, et cetera, cannot now be collected.

Request 48. The provisions of Article X of the Amended Order are invalid and void.

Request 49. It was error for the administrator to include milk produced, handled and consumed wholly within Massachusetts in computing the blended price and in computing bills to the defendants.

Request 50. The milk thus produced, handled and consumed wholly in Massachusetts was not in the current of interstate or foreign commerce.

Request 51. The price paid for the milk thus produced, handled and consumed wholly in Massachusetts does not directly burden, obstruct or affect interstate commerce.

Request 52. It was error for the administrator to include milk received by the Whiting Company as its receiving stations at Newport, Maine and Colebrook, New Hampshire in computing the blended price and in computing bills to that defendant.

Request 53. It was error for the administrator in computing the blended price and in computing bills to these defendants to include milk purchased by the Hood and Whiting Companies at their country stations and later shipped to Boston.

Request 54. The continued failure of the Secretary of Agriculture to render a decision on the petitions filed with him under Section 8c (15) (A) prior to the commencement of this proceeding raising questions as to the validity of the Amended Order and the correctness of its administration disentitle the plaintiffs to a decree ordering payment to the market administrator of the sums alleged to be due.

Request 55. The defendant, Whitcomb Farms, Inc. is not subject to the Order Number 4 as amended.

Request 56. The Amended Order unreasonably and illegally discriminates against Massachusetts producers.

REQUESTS FOR CONCLUSIONS OF LAW BY E. FRANK BRANON, INTERVENOR.

Presented January 28, 1939.

Now comes E. Frank Branon and requests the court to make the following conclusions of law:

Request 1. The Act and its application in the Amended Order cause financial loss to the intervenor and other producers selling to the defendant H. P. Hood & Sons, Inc. and the intervenor has a real and genuine interest entitling him to challenge the constitutionality of the Act and its application in the Amended Order.

Request 2. The provisions of the Act (Sections 8c (5) (B) (ii) and 8c (5) (C)) and of the Amended Order with respect to the collection of equalization charges cause financial injury to the intervenor and the intervenor has a real and genuine interest entitling him to challenge the equalization provisions of the Order.

Request 3. The intervenor has a real and genuine interest in these proceedings because, under the terms of the contracts under which he has sold milk to the defendant H. P. Hood & Sons, Inc., that defendant is under a binding legal obligation to pay to him the difference between the blended price announced by the administrator and the price posted by the defendant for each delivery period if the defendant is not required to make equalization payments for such periods under the provisions of the Amended Order.

Request 4. The provisions of the Act and the Amended Order with respect to the collection from payments to be made by handlers to producers of amounts to be expended for marketing services cause financial loss to the intervenor as a producer selling to the defendant, H. P. Hood & Sons, Inc., and the intervenor has a real and genu-

ine interest in resisting the collection of such amounts from such defendant.

Request 5. The provisions of the Act (Sections 8c (5) (B) (ii) and 8c (5) (C)) and of the Amended Order (Article VIII) providing for equalization on the basis of a market-wide pool, take the property of the intervenor and of other producers selling to the defendant H. P. Hood & Sons, Inc. without due process of law in violation of the Fifth Amendment.

Request 6. Section 8c (5) (E) of the Act, as applied in Article IX of the Amended Order, providing tor deductions from payments to producers for marketing services, takes the property of the intervenor and other producers selling to the defendant H. P. Hood & Sons, Inc. without due process of law in violation of the Fifth Amendment to the Constitution.

Request 7. Payment to the market administrator of sums now deposited in the Registry of the District Court, which have been deducted pursuant to Article IX of the Amended Order from payments due to the intervenor for milk sold will deprive the intervenor of his property without due process of law in violation of the Fifth Amendment since the market administrator has not rendered and cannot now render the marketing services for which such sums were deducted.

Request 8. The provision of Article VII, Section 1, par. 1 of the Amended Order requiring the market administrator to exclude from the computation of the blended price of milk of handlers who have not made producer settlement payments for milk received during the delivery period next preceding but one is invalid because not authorized by the Act, and that provision has caused and will cause financial loss to the intervenor and all other producers similarly situated.

In addition to the above conclusions of law the intervenor joins in all the requests for conclusions of law submitted on behalf of the defendants in all cases before this court except Request No. 3.

Respectfully submitted,

EDWARD L. MERRILL,

Attorney for E. FRANK BRANON, *Intervenor.*

Said cause is thereupon set down for hearing on the pleadings and the master's report on February 1 and 2, 1939, and is fully heard by the court, the Honorable George C. Sweeney, District Judge, sitting.

Said cause is thence taken under advisement and on February 23, 1939, an opinion of the court is announced, upholding the constitutionality of the Act and the validity of the Amended Order No. 4 and granting mandatory injunctions to the plaintiffs.

On the twenty-seventh day of February, A. D. 1939, a supplemental opinion is announced.

On the ninth day of March, A. D. 1939, the following Defendants' Waiver on certain issues is filed:

DEFENDANTS' WAIVER.

[Filed March 9, 1939.]

Come now H. P. Hood & Sons, Inc., and Noble's Milk Company, the defendants in the above-entitled action, and by their attorneys hereby waive their requested conclusions of law numbered 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45 and 46 and admit only for the purposes of this case that the method of computing the blended price for the delivery periods between August 1, 1937 and January 16, 1939, adopted by the market administrator, was justified by the terms and provisions of Order No. 4 as amended on July 28, 1937, except in so far as said market administrator included in his computations the milk received by handlers from producers who did not have certificates of registration issued pursuant to Sections 16A–16C of Chapter 94 of the General Laws of Massachusetts, which act or acts the said defendants do not admit to have been justified by the aforesaid amended order. The foregoing waiver and admission is made for the purposes of this proceeding only and without prejudice to any right of the said defendants to question in any proceedings other than this cause the lawfulness of such a method or methods of computation.

By their Attorneys,

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS.

Also on the said ninth day of March, A. D. 1939, it is ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that Samuel W. Tator, market administrator, be made party plaintiff for the limited purpose of complying with decree to be hereafter entered.

Thereupon, to wit, March 9, 1939, the following Final Decree is entered:

FINAL DECREE.

March 9, 1939.

This cause came on to be heard on the report of a special master appointed by this court to take evidence and find the facts in the above-entitled cause. All parties being represented by counsel and the court having heard the arguments, considered the master's report, and being fully advised in the premises, it is ordered, adjudged and decreed:

1. That the master's report be and hereby is confirmed.

2. That plaintiffs' objections to paragraphs 192 to 218 of the master's report be and hereby are overruled.

3. That defendants' requests for conclusions of law be and hereby are denied, except in so far as they are consistent with the conclusions of law heretofore stated by this court in this cause.

4. That the defendants, their agents, officers, employees, successors and assigns, be and they hereby are permanently restrained and enjoined from violating any of the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937, regulating the handling of milk in the Greater Boston Marketing Area.

5. That the defendants, their agents, officers, employees, successors and assigns, be and they hereby are commanded and directed to comply with all the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937.

6. That the defendants are hereby commanded and directed to pay within ten (10) days after the entry of this decree any and all amounts heretofore billed to each of the said defendants by the market administrator under Order No. 4 as amended July 28, 1937, for each delivery period between August 1, 1937, and January 15,

1939, and such further amounts which have not heretofore been paid into the registry of this court but which are now due and owing under the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937, to the market administrator appointed under Order No. 4 as amended, for him to hold and to distribute in accordance with the following paragraphs of this decree.

7A. That the market administrator appointed under Order No. 4 as amended shall determine and certify forthwith to the clerk of this court the amounts of the marketing service charges withheld from producers under Article IX of said Amended Order and paid into the registry of this court in compliance with the decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order entered on June 24, 1938, by the United States Circuit Court of Appeals for the First Circuit (97 F. (2d) 677).

7B. That within ten (10) days after the receipt of the certificate mentioned in paragraph 7A hereof the clerk of this court shall pay to the said market administrator the amounts shown in said certificate.

7C. That the said market administrator shall distribute to the producers from whom such sums were withheld the amounts received by him from the clerk of this court pursuant to paragraph 7B hereof, by paying such amounts to the handlers to whom the producers, entitled to the distribution under this paragraph, sold or delivered their milk during the delivery periods August 1, 1937 to January 15, 1939, in such manner as is determined by the market administrator to be necessary in order to insure such payments being received by such producers.

8A. That the market administrator shall recompute and publicly announce forthwith and in no event more than ten (10) days after the entry of this decree the blended price for each delivery period between August 1, 1937 and January 15, 1939, both inclusive, following the method of computation prescribed by Order No. 4 as amended on July 28, 1937, as heretofore applied by said market administrator, except only as, with respect to issues not determined in this cause, he shall have been directed to change the same by an order entered upon a petition for review filed under Section 8c (15) of the Agricultural Marketing Agreement Act of 1937, and using the same

class prices that were used for such delivery periods, and correcting such factual errors as may have been revealed prior to such recomputation by his audits of handlers' books and records, and including in the recomputation for each such delivery period the value of the milk of every handler who at the date of said recomputation shall have filed with said market administrator the report required under Article V of Order No. 4 as amended on July 28, 1937 for the delivery period for which said recomputation is made, and deducting such a sum in his recomputation for each such delivery period as will result in such a blended price as will enable the said market administrator at once to liquidate from moneys either paid to him for such delivery period or paid for such delivery period into the registry of this court all payments which may become due and owing on his part either under Article VIII of the aforesaid Amended Order or under paragraph 10 hereof.

8B. That the market administrator shall credit for each delivery period the producer settlement account of each handler whose milk was included in the recomputation for such delivery period with the difference between the blended price as originally computed, plus any applicable differentials pursuant to Section 4 of Article VIII of Order No. 4 as amended on July 28, 1937, and the blended price as recomputed, plus any applicable differentials pursuant to Section 4 of Article VIII of Order No. 4 as amended on July 28, 1937, for such period times the quantity of milk received by the handler in such period from producers not required to be paid for such period pursuant to Paragraph 2 of Section 1 of Article VIII of said Amended Order.

8C. That the market administrator shall credit each handler's account with the amount of all sums paid into the registry of this court in this cause by reason of charges against their producer settlement accounts less one per centum of all amounts paid by such handler into the registry of this court.

8D. That the market administrator shall first apply the credit or credits entered to each handler's account against any outstanding debit balance due to said administrator from such handler under Order No. 4 as amended on July 28, 1937, and shall then determine

the amount of any credit or credits remaining to each handler's account after such offsets shall have been made.

8E. That the market administrator shall file with the clerk of this court and deliver upon the day of the filing to each defendant a certificate showing,

(a) the amount of the recomputed blended price for each delivery period,

(b) the amount of the credit or credits entered to the producer settlement account of each defendant,

(c) the amount of any credit remaining to the producer settlement account of each defendant after making the set-offs referred to in paragraph 8D hereof,

(d) the amount of any payments or advances made by each defendant to producer required to be paid under Article VIII, Section 1, paragraph 1 of Order No. 4 as amended on July 28, 1937, in excess of the amounts required to be paid to such producers on the basis of the blended price as originally computed and announced for each such delivery period.

9. That within ten (10) days after the filing with the clerk of this court of the certificates referred to in paragraph 8E hereof the clerk of this court shall pay to the market administrator appointed under Order No. 4 as amended all moneys which have been deposited in the registry of this court by the defendants in compliance with the decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order entered on June 24, 1938, by the United States Circuit Court of Appeals for the First Circuit (97 F. (2d) 677), less such amounts as shall have been retained by the clerk of this court pursuant to U.S.C. Title 28, Sec. 555 (8) and less such amounts as shall have been paid to the said market administrator pursuant to paragraph 7B hereof, to hold and to distribute in accordance with paragraphs 10 and 11 hereof.

10. That the market administrator upon receipt of moneys referred to in paragraph 9 hereof forthwith shall pay to each handler the amount of the credit or credits to such handler's accounts remaining

after the offset required by paragraph 8D hereof in the following manner: first, he shall pay all or the necessary portion of such amount to each handler in whatever manner he shall determine to be necessary in order to insure that the producers required to be paid by such handler pursuant to Article VIII, Section 1, paragraph 1 of Order No. 4 as amended on July 28, 1937, will receive those sums which will, when added to the sums such producers have previously received for or on account of milk delivered in each such delivery period, result in the payment to such producers of an amount not less than that required on the basis of the recomputed blended price for each delivery period; and second, he shall pay to each such handler any remaining portion of such credit or credits so that each such handler will receive to his own use any amounts not in excess of said credits which he shall have advanced to such producers for any and all such delivery periods over and above the amounts which he owed such producers on the basis of the blended price as originally computed.

11. That the market administrator shall retain and use in accordance with the provisions of Order No. 4 as amended, that part of the moneys referred to in paragraph 9 hereof which shall remain after he shall have made the payments required by paragraph 10 hereof.

12. That the prayer for relief in the answer of E. Frank Branon, intervenor, be and the same is hereby denied.

13. All charges and collections made under U.S.C. Title 28, Section 555 (8) shall be borne by the defendants.

GEORGE C. SWEENEY,
United States District Judge.

From the foregoing final decree, the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, and E. Frank Branon, intervenor, claim appeals to the United States Circuit Court of Appeals for the First Circuit, appeal bonds being waived.

MEMORANDUM OF UNITED STATES DISTRICT COURT. *RE* PRELIMINARY INJUNCTION.

[November 19, 1937; amended November 24, 1937 and further amended November 30, 1937.]

SWEENEY, J. This case is before me on the plaintiffs' application for a preliminary injunction. It is one of thirty cases which were argued simultaneously. The facts differ in many of the cases and are being treated separately.

FINDINGS OF FACT.

The defendants have a principal place of business in Massachusetts, and are engaged in handling milk, either in the current of interstate commerce, or in such a manner that it directly burdens, obstructs or affects interstate commerce in that commodity.

A continuous flow of fresh milk into the Boston Area, which includes thirty-seven cities and towns, from rural New England is imperative. From the urban viewpoint, it is a matter of real necessity. From the producers' viewpoint, it provides a dependable market for their product, and is an important source of income to them. Less than 12 per centum of the milk brought into the Boston Area originates in Massachusetts, and less than 2 per centum of it is handled exclusively in intrastate commerce.

From 1929 to 1933, the prices paid for milk to the producers of New England declined steadily. In 1936 the price paid to producers of Vermont was 34 per centum below the 1929 level. Conditions in other states were comparable.

Effective regulation has in the past proven to be a boon to milk producers. Heretofore, when federal regulation has failed, a resumption of chaotic marketing conditions and a lowering of price levels have occurred. Experience teaches that a resumption of such conditions will occur if the defendants and others similarly situated are permitted to avoid complying with the law as it exists.

The defendants contend that irreparable damage will be suffered by compulsory payments to the marketing administrator. If it later develops that the Marketing Agreement Act, Order No. 4, or action taken thereunder is unconstitutional, in that there is no method pro-

vided for recovery of payments which the law exacts. This argument has no appeal to this court primarily because the money that the handler is called upon to pay to the administrator is essentially money which has accrued to the defendant as the result of the act itself.

As a matter of fact, certain of the handlers (*i.e.* those who are able to dispose of the bulk of their goods at fluid, or Class I prices) will acquire and enjoy a distinct advantage over their less fortunate competitors if payments to the marketing administrator can be avoided or delayed. The money which the defendants are called upon to pay to the administrator must be distributed by him to other handlers in order that they may comply with the section of the act which calls for payment of a blended price to the producers. Obviously, if payments are not made to the marketing administrator there can be no payments made by him to the handlers who dispose of the bulk of their property at non-fluid or Class II prices. It is not in the public interest to foster such a condition.

On November 30, 1935, the Secretary of Agriculture, acting under Section 8b and 8c (3) of the act, as amended, notified handlers of a proposed marketing agreement and order thereunder to regulate the handling of milk in the Boston Area.

Public hearings were held at St. Johnsbury, Vermont, on December 10 and 11, 1935, and at Boston, Massachusetts, on December 12, 1935, in accordance with the terms of that notice. Less than 50 per centum by volume of the milk marketed in the area approved and signed the agreement.

On February 7, 1936, in conformity with Section 9, the Secretary of Agriculture, with the approval of the President of the United States, determined

(a) that the refusal, by the handlers, to sign such an agreement tended to prevent the effectuation of the policy of the act, and

(b) that the issuance of an order was the only practical means of advancing the interests of producers, and

(c) that at least two-thirds of the producers, engaged in the business, approved such an order,

and issued Order No. 4 regulating the handling of milk in the Boston Area. All findings and determinations necessary thereto having been made, the order became effective on February 9, 1936.

On August 1, 1936, a suspension of Order No. 4 was declared by the Secretary of Agriculture. On June 25, 1937, this suspension was terminated, the termination so far as it related to Articles I, II, III, V, VI (Sec. 1) XII, XIII, XIV, XV, XVI, being effective on July 1, 1937, and, so far as it related to the remaining provisions of the Order, being effective on August 1, 1937.

On July 27, 1937, in accordance with the provisions of Section 8c (3) and 8c (17) of the Act, the Secretary, with the approval of the President, amended Order No. 4 to be effective August 1, 1937.

Notwithstanding that the law is in effect now, these defendants have failed to comply with the act and order thereunder in that they have failed to make payments to the marketing administrator under Paragraph 3 of Section 1 of Article VIII of Order No. 4, as amended, in the following sums for the periods stated:

	Hood	Noble
August 1 to 15, 1937	$29,452.28	$3,205.72
August 16 to 31, 1937	32,463.42	3,147.22
September 1 to 15, 1937	46,945.52	4,185.20
September 16 to 30, 1937	46,869.31	4,315.35

There is also owed by these defendants under Section 1 of Article X of Order No. 4, as amended, the following sums for the periods stated:

	Hood	Noble
August 1 to 15, 1937	$1,927.50	$117.14
August 16 to 31, 1937	2,008.96	120.93
September 1 to 15, 1937	1,931.02	113.37
September 16 to 30, 1937	1,927.43	114.33

There is also owed by these defendants under Section 1 of Article IX of Order No. 4, as amended, the following sums for the periods stated:

	Hood	Noble
August 1 to 15, 1937	$1,900.13	$117.14
August 16 to 31, 1937	1,980.67	120.93

	Hood	Noble
September 1 to 15, 1937	1,905.22	113.37
September 16 to 30, 1937	1,900.75	114.33

None of the foregoing sums have been paid by these defendants to the marketing administrator.

This Act was designed to meet a public necessity. The status of the public interest should be preserved until the Supreme Court has passed upon the many questions raised by these defendants. Such a preservation cannot be had by allowing those who should contribute, to retain moneys from the administrator, which, under the Act, belong to other handlers or their producers.

CONCLUSIONS.

That Congress has not provided a mode of redress in the event that the Act is declared unconstitutional is not new or fatal to the Act. It is not the duty of this court to pass upon the type or wisdom of legislation enacted by the Congress. There is a strong presumption that all legislative enactments are constitutional. *Ogden* v. *Saunders*, 25 U. S. 213, 270; *Union Pac. R. R.* v. *U. S.*, 99 700, 718; *Knox* v. *Lee*, 79 U. S. 457; *In re Jones*, 10 F. Supp. 165, 166. There is also a well recognized principle of law that inferior courts should hesitate to declare acts unconstitutional until it appears clearly that Congress has exceeded its authority.

From the study that I have made of the Act and to the order thereunder in connection with the thirty cases before me, I am of the opinion that stripped of its presumptions of constitutionality and unattended by limitations of propriety, the Agricultural Marketing Agreement Act of 1937 and Order No. 4 thereunder are valid exercises of the constitutional powers of Congress to regulate interstate commerce.

The authority of a state to establish any regulation of, or create a burden upon, traffic in interstate commerce has been expressly denied in *Baldwin* v. *Seelig*, 294, U. S. 511, wherein Mr. Justice Cardoza, citing the *International Textbook Co.* v. *Pigg case*, 217 U. S. 91, 112, stated: "It is the established doctrine of this court that a state may not in any form or under any guise, directly burden the

prosecution of Interstate business." This would likewise apply to any regulation of interstate commerce.

If this authority is denied to the states, I think it can be fairly said that it must exist in the Congress. The Supreme Court has repeatedly stated that the power to regulate interstate commerce among the several states is supreme and plenary. See *Minnesota Rate Case,* 230 U. S. 352, 398, wherein it was stated that it is "complete in itself and may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. *Gibbon* v. *Ogden,* 9 Wheat. 1, 196."

In *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1, 36, 37, the court stated: "The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball,* 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*Mobile County* v. *Kimball,* 102 U. S. 691, 696, 697); 'to foster, protect, control and restrain.' *Second Employers' Liability Cases,* 223 U. S. 1, 47. See *Texas & N. O. R. Co.* v. *Railway Clerks,* 281 U. S. 548. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it'."

This act seeks to regulate commerce among the several states, and chooses as its mode of regulation the fixing of minimum prices to be paid for the product in interstate commerce. In *Carter* v. *Carter Coal Company,* 298 U. S. 238, the majority of justices found it unnecessary to pass directly on the question whether Congress has the right to fix a minimum price to be paid for a commodity moving in interstate commerce, but, in the minority opinion, Mr. Justice Cardozo, with the approval of three other justices, stated, at page 326, that prices in interstate transactions "must therefore be subject to the power of the nation unless they are to be withdrawn altogether from governmental supervision". No case has been called to my attention in which the Supreme Court of the United States has expressed a contrary view.

See also *United States* v. *Buttrick,* 91 F. (2d) 66, 68, wherein Mr. Justice Bingham stated: "It is apparent from a reading of these

provisions that neither Section 8b nor Section 8c (1) and its subdivisions have any direct relation to the control or regulation of agricultural production, but solely to the marketing of milk and certain fruits bought and sold in interstate commerce—a matter within the exclusive control of Congress and not of the states."

If the power exists in the Congress to establish minimum prices for commodities moving in interstate commerce, I can find no exercise of that power either in the Act, Order No. 4 or the actions thereunder which would result in the deprivation of property without due process of law. See *Nebbia* v. *N. Y.*, 291 U. S. 502, 523.

I am therefore of the opinion that the plaintiffs are entitled to the preliminary injunctions asked for in the first two prayers of their bill of complaint, pending a hearing on the merits.

The defendants' requests for rulings of law are denied except in so far as they are consistent with the above. The plaintiffs' requests for rulings of law are denied except in so far as they are consistent with the above.

A separate order is today being made with reference to the completion of pleadings and for an early trial on the merits.

SUPPLEMENTAL FINDINGS OF FACT.

November 24, 1937.

SWEENEY, J. The following findings of fact are hereby incorporated into and become a part of the memorandum, dated November 19, 1937.

On September 9, 1937, there was brought in the Superior Court and the Supreme Judicial Court of the State of Maine in and for the County of Franklin, a suit in equity entitled Alonzo P. Richards *v.* H. P. Hood & Sons, Inc., et al., and Samuel W. Tator, market administrator, numbered 307, in which suit, on September 9, 1937, there was issued *ex parte* by Hon. William H. Fisher, a judge of said Superior Court, a temporary restraining order against H. P. Hood & Sons, Inc., in accordance with the prayers in the bill of complaint, restraining it from paying to Samuel W. Tator, market administrator, any sum or sums claimed by him to be payable to him from and by H. P. Hood & Sons, Inc., with respect to or for

the periods August 1 to August 15, 1937, and August 16 to August 31, 1937, under or by virtue of Order No. 4, as amended. The bill of complaint in said suit in equity and the said restraining order, having been offered in evidence, are incorporated herein by reference.

On October 11, 1937, there was brought in the Superior Court and the Supreme Judicial Court of the State of Maine in and for the County of Franklin, a suit in equity entitled Alonzo P. Richards *v.* H. P. Hood & Sons, Inc., et al., and Samuel W. Tator, market administrator, numbered 308, in which suit, on October 11, 1937, there was issued *ex parte* by Hon. William H. Fisher, a judge of said Superior Court, a temporary restraining order against H. P. Hood & Sons, Inc., in accordance with the prayers in the bill of complaint, restraining it from paying to Samuel W. Tator, market administrator, any sum or sums claimed by him to be payable to him from and by H. P. Hood & Sons, Inc., with respect to or for the periods September 1 to September 15, 1937, September 16 to September 30, 1937, and October 1 to October 11, 1937, under or by virtue of Order No. 4, as amended. The bill of complaint in said suit in equity and the said restraining order, having been offered in evidence, are incorporated herein by reference.

On October 29, 1937, the defendant Noble's Milk Company filed in this court a bill of interpleader, docket No. 4556, under the provisions of the Act of Congress of January 20, 1936, c. 3, § 11, U.S.C. Title 28, Sec. 41 (26); making parties thereto the said market administrator and producers of milk whom, it alleged, were all the producers from whom it purchased milk from August 1, 1937, to October 29, 1937, and paid into the registry of this court the sum of $10,202.72, being the total amount demanded by the market administrator from Noble's Milk Company under the provisions of Order No. 4, as amended, for the period August 1 to September 30, 1937. On November 8, 1937, pursuant to paragraph 16 of said bill of interpleader, Noble's Milk Company deposited in the registry of this court the sum of $4,796.17, as being the total amount demanded by the market administrator from Noble's Milk Company under the provisions of Order No. 4, as amended, for the period October 1

to October 15, 1937. The bill and the docket entries in said case are incorporated by reference herein.

The defendant H. P. Hood & Sons, Inc., through its attorneys, offered in open court to pay all sums now demanded by the said market administrator as due under the terms and provisions of said Order No. 4, as amended, and all sums that hereafter become due during the pendency of this cause and the effective continuance of said Order No. 4, as amended, into the registry of this court or to The First National Bank of Boston, as trustee, to be held pending the final determination of this cause, and to be paid to said market administrator, or his successors in office, if and when it shall be finally determined in this cause that the defendant H. P. Hood & Sons, Inc. is legally obligated to make such payment, otherwise to be returned to the defendant H. P. Hood & Sons, Inc.

On September 9, 1937, the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company, pursuant to the provisions of Section 8c, subsection 15A of the Agricultural Marketing Agreement Act of 1937, filed with the plaintiff Henry A. Wallace, Secretary of Agriculture, petitions seeking administrative relief and exemption under the provisions of and obligations arising from Order No 4, as amended. Said petitions, offered in evidence, are incorporated by reference herein. Ten days of hearings were had on said petitions. The Secretary of Agriculture has not yet made any ruling upon the prayers of the petitions.

OPINION AND ORDER OF THE *UNITED STATES CIRCUIT COURT OF APPEALS*, CONTINUING THE SUPERSEDEAS

ISSUED BY BINGHAM, J.

June 24, 1938.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIRST CIRCUIT.

October Term, 1937.

No. 3325.

H. P. Hood & Sons, Inc., et al., Defendants, Appellants,

v.

United States of America et al., Plaintiffs, Appellees.

No. 3326.

Whiting Milk Company *v.* Same.

No. 3327.

W. P. Elliott Company *v.* Same.

No. 3328.

Green Valley Creamery, Inc., *v.* Same.

No. 3329.

Seven Oaks Dairy Company *v.* Same.

No. 3330.

A. J. Robinson *v.* Same.

No. 3331.

William J. Martines et al *v.* Same.

Appeals From the District Court of the United States for the District of Massachusetts.

Before Wilson, Morton and Mahoney, JJ.

PER CURIAM AND ORDER OF COURT.

June 24, 1938.

Per Curiam. These cases on appeal to this court involve the validity of a temporary mandatory injunction issued by the District Court ordering the several defendants to comply with Order No. 4 issued by the Secretary of Agriculture under the Marketing Agreement Act, and requiring each of them to pay to the market administrator under the Act all amounts now due and owing, and hereafter to become due and owing under said Order No. 4.

We think the temporary mandatory injunction should continue in force until the final determination of the cases on their merits, but inasmuch as the several defendants before this court have raised objections to the validity of Order No. 4, and to the authority of the Secretary to issue such an order under the Act, and the several objections do not appear to this court to be frivolous and without merit; and whereas the payments to the market administrator by the several defendants of the sums computed to be due under said Order No. 4, if said Order should be found to be invalid on appeal, would work irreparable hardship to each of the defendants, since if once distributed in accordance with Order No. 4 by the market administrator among the several producers of the milk, such payments could

not be recovered by the defendants; and whereas a judge of this court issued a supersedeas staying and superseding the operation of the temporary mandatory injunction pending decision on appeal therefrom, but only in so far as it commands and directs and otherwise requires the several defendants to pay to the market administrator all amounts now due and owing, and hereafter to become due and owing, under the provisions of Order No. 4 as amended (excepting, however, from the operation of the order of supersedeas all payments due or to become due under Section 1 of Article X of Order No. 4) upon condition that the amount of said payments now due and as they become due from time to time, shall be paid, pending the final determination of this appeal, and subject to the further order of this court, into the registry of the District Court of Massachusetts; and whereas the evidence has been all taken out for presentation of the several cases on the merits,

Therefore, it is ordered that the supersedeas order issued in each case by a judge of this court shall be continued pending the final determination on appeal of the several cases on their merits; also excepting from this order continuing the supersedeas the payments due and to become due the market administrator under Section 1 of Article X of Order No. 4. The bond of Noble's Milk Company filed in the District Court will remain in full force, conditioned as required by law, but shall be void provided Noble's Milk Company shall pay into the registry of the District Court of the District of Massachusetts all sums now due and hereafter to become due from it under the provisions of said Order No. 4, excepting the payments due and to become due the market administrator under Section 1 of Article X of Order No. 4.

OPINION.

February 23, 1939.

Equity No. 4519.

United States of America, and Henry A. Wallace, Secretary of Agriculture,

v.

H. P. Hood & Sons, Inc. and Noble's Milk Company.

Equity No. 4520, Same *v.* The Whiting Milk Company.

Equity No. 4521, Same v. W. P. Elliott Company.

Equity No. 4522, Same *v.* Green Valley Creamery, Inc.
Equity No. 4529, Same *v.* F. W. LaRoe and John E. Burr.
Equity No. 4530, Same *v.* A. J. Robinson.
Equity No. 4536, Same *v.* Whitcomb Farms, Inc.
Equity No. 4540, Same *v.* A. J. McNeil & Sons.
Equity No. 4543, Same *v.* Wm. T. Jones Company.
Equity No. 4544, Same *v.* Westwood Farm Milk Company.
Equity No. 4550, Same *v.* Mason's Creamery Company.

SWEENEY, J. Thirty actions filed by the plaintiffs were heard together on the question of a temporary mandatory injunction. This court entered a decree ordering the defendants to comply with Marketing Order No. 4, as amended, during the pendency of this suit. *United States of America, et al.* v. *Whiting Milk Co.*, 21 F. Supp. 321.

The cases were then referred to a special master with directions to hear the parties and their evidence, and to make and report his findings of fact to the court. Hearings were held beginning on January 4, 1938, and were recently concluded. The master's report was filed on January 27, 1939.

The only question pertaining to the master's report is raised by the plaintiffs who object to the inclusion of paragraphs 192 to 218 of the report on the grounds that they are immaterial and irrelevant. Since the defendants raise the question of the validity of Order No. 4, and the proper administration of the amended Order No. 4 by the marketing administrator, I am of the opinion that the paragraphs referred to should be included in the report. The court therefore overrules the objection and confirms the master's report.

After the injunction was issued, and on application of the defendants, a supersedeas *pendente lite* was issued by the Senior Circuit Judge of this circuit, staying and superseding the operation of the temporary injunction insofar as it compelled payments by the defendants to the marketing administrator, and directing that payments should be made to the clerk of this court instead, or that a bond should be filed to guarantee such payments. Later, the supersedeas was amended to reinstate the injunction which had ordered payments of administration expenses under Article X of the order

to the Administrator. The net result of the action of this court and the supersedeas was to compel payment of administration expenses directly to the marketing administrator, and payments of the equalization charges under Article VIII, and the marketing service charges under Article IX, to the clerk of this court.

On appeal from the injunction, the Circuit Court ordered that the supersedeas ordered issued by the Senior Circuit Judge should be continued pending the final determination of the cases on their merits. *H. P. Hood & Sons, Inc., et al.* v. *United States, et al.*, 97 F. (2d) 677.

There are now but eleven of the original thirty cases before me for decision. The rest of them are dependent on the decision in these cases, except in one or two instances, where additional testimony is to be taken. This decision will treat the cases as one case, and variations in the facts or law as applicable to any of them will be treated at the end of this opinion.

As a basis for the denial of the relief sought the defendants urge three broad grounds: first, the unconstitutionality of the Agricultural Marketing Agreement Act of 1937, hereinafter referred to as the act; second, the invalidity of Order No. 4, both in its original form and as amended; and, third, the improper and illegal administration of Order No. 4, as amended.

The constitutionality of the act was passed upon by this court in *United States of America, et al.*, v. *Whiting Milk Co., supra.* The reasoning and decision in that case are adopted here. In addition to the grounds urged, the defendants now raise one other question—whether the act is unconstitutional because of the improper delegation of legislative power to the Secretary of Agriculture or to a group of private persons. The defendants contend that this court is bound by the decision of the Circuit Court of Appeals for this Circuit in *Butler* v. *United States*, 78 F. (2d) 1, wherein it held that the Agricultural Adjustment Act of 1933 was unconstitutional because the Congress improperly delegated legislative power to the executive department. They also contend that even if this court is not bound to follow the decision in the *Butler* case, under the doctrine of *stare decisis*, the Act shows a delegation of authority without set-

ing up proper standards as a guide for the exercise of that authority. The defendants' first contention is untenable. The decision of the Circuit Court of Appeals in the *Butler* case, *supra*, was a decision on the original Agricultural Adjustment Act. After the Supreme Court of the United States had affirmed the decision of the Cir it Court (without passing on the question of the delegation of legislative authority) the Act, including the delegation clause, was amended. As the 1937 Act now stands, the delegation clause is quite different from the one passed on by the Circuit Court in the *Butler* case. The doctrine *stare decisis* has no application here.

The Act contains the following declaration of policy:

"Sec. 2. It is hereby declared to be the policy of Congress—

"(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August, 1909–July, 1914. In the case of tobacco and potatoes, the base period shall be the post war period, August, 1919–July, 1929.

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this

title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

To effectuate the policy of the act, the Secretary of Agriculture is authorized under section 8c (4) to issue an order. Section 8c (5) specifies in detail the terms and conditions of any orders that may be issued, and provides that no other terms and conditions may be contained in such order. A close reading of 8c (5) leads to the conclusion that the power delegated by Congress to the Secretary has not only a definite standard to follow, but has limitations beyond which the Secretary may not go. The standard or criterion that is to govern the exercise of authority given to the Secretary is the levelling of prices for agricultural commodities between the current period and the base period prescribed in the act. It contains a definite and fixed standard to which the Secretary must adhere, and provides the precision of guidance which were pointed out as lacking in the National Industrial Recovery Act in *Schechter Corp.* v. *U. S.*, 295 U. S. 495, and *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. The exact point urged by these defendants was recently passed upon by the Fifth Circuit in *Whittenburg, et al.* v. *U. S.*, 100 F. (2d) 520, wherein it was held that the act was not unconstitutional because of an unwarranted delegation of legislative power. To the same effect are *Edwards* v. *U. S.*, 91 F. (2d) 767; *Wallace* v. *Hudson-Duncan*, 98 F. (2d) 985; and *Currin, et al.* v. *Wallace, et al.*, decided by the Supreme Court of the United States January 30, 1939.

The defendants next contend that section 8c (12) of the act amounts to an unconstitutional delegation of legislative authority to a group of producers or to the officers of the cooperative associations having control of the producer vote. This section, and section 8c (19) which permits the Secretary to conduct a referendum for the purpose of determining the sentiment amongst the producers, does not transcend the power of Congress to submit the question of the approval of an order to the producers. Some method or means of ascertaining the sentiment of the producers had to be provided, and the method provided by section 8c (12) and 8c (19) is not arbi-

trary or capricious. The master's report contains no indication that if a different method of ascertaining the sentiment of the producers had been used any result other than approval of the amended Order No. 4 would have been obtained. The act is not unconstitutional because of any alleged improper delegation of legislative authority.

The defendants attack the constitutionality of the act on another ground. Assuming for the purpose of this attack that Congress has the power to fix a minimum price on milk in interstate commerce, they then urge, citing *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, that the equalization pool authorized by the act operates to deprive those defendants, who dispose of the bulk of their milk at fluid prices, of a portion of their profits, and transfer them to other handlers having less of the fluid market. They contend that it is a taking of their property and giving it to another, a doctrine thoroughly inconsistent with the *Thompson case*. As I view the facts presented in the master's report, the defendants' contention is unsound. The effect of this law is not to take profits from one distributor and pay them to another. The real effect is that it takes from the handler the difference between the amount he paid the producers, (the blended price is only a minimum price) and the amount he should have paid the producer as ultimately determined by his sales. See *Milk Control Board* v. *Crescent Creamery*, 14 N. E. (2d) 588, 590. The facts presented in this case disclose a situation more closely akin to those presented in the *New England Divisions Case*, 261 U. S. 184, and the *Dayton-Goose Creek Ry.* v. *U. S.*, 263 U. S. 456.

The *New England Divisions Case* held that an order of the Interstate Commerce Commission, which increased the New England share of a joint rate by 15 percent, was constitutional. Under the order the joint rates were not increased, so that the effect of awarding the New England railroads a 15 percent increase necessarily meant that the money constituting the increase must be taken from the roads operating west of the Hudson River. In that decision, the court recognized the adoption by Congress of a new policy and a new exercise of an old power vested in it. At page 189 of that decision, the court pointed out that the prior enactments of Congress had been concerned chiefly with the prevention of abuses in rates.

The new 1920 Act sought not only to correct abuses, but to insure adequate transportation service. The court, deciding the Order valid, held that, in its control of interstate commerce, the Congress was not limited to mere police duty amongst the railroads, but, to attain the new purpose could create new rights, new obligations, and new machinery. Again in the *Dayton-Goose Creek* case, in passing upon the "recapture" phase of the 1920 Transportation Act, the court denied that the power of Congress to regulate interstate commerce was exhausted by the fixing of reasonable rates and the prevention of those which are discriminatory. In rejecting the narrow construction of the commerce clause, Mr. Chief Justice Taft said: "To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety." *Dayton-Goose Creek Ry.* v. *U. S., supra,* 478.

It is in the interest of those concerned, as well as the public at large, that the marketing of milk flowing in interstate commerce should be regulated. Without regulation, it is simply a question of slow death to those handlers who buy at the blended price and are forced to sell great portions of their commodity at the Class II prices. In *Nebbia* v. *New York,* 291 U. S. 502, 517, the court said "A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and distributors in the milkshed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor." This is applicable here.

The regulation and control adopted by Congress eliminates the bad effect of the arbitrary classification of milk for sale either as Class I or Class II milk. The handlers who in the past have had the advantage of disposing of the bulk of their milk at Class I prices have no lien or property right in this preferred market. They cannot corner and hold it against the power of Congress to control the commerce and industry insofar as it affects interstate commerce. They must give way to that power. I rule that the act is not unconstitutional on this ground.

The defendants urge at great length that the original Order No. 4 and the amended Order No. 4 are both invalid. Whether or not Order No. 4, issued on February 7, 1936, is invalid, because of the failure to strictly comply with the provisions of the act for notice, hearings and findings, is not material, since the Marketing Agreement Act of 1937, which became effective on June 3, 1937, "expressly ratified, legalized and confirmed" all marketing agreements, licenses, orders, regulations, provisions and acts prior thereto. Amended Order No. 4 became effective after the passage of the 1937 act, and therefore must be examined more closely.

In promulgating amended Order No. 4, the Secretary did not make a specific finding and proclamation under section 8e of Act to the effect that the pre-war base period could not be satisfactorily determined from available statistics. The defendants contend that the failure of the Secretary to make such a specific finding and proclamation renders the amended Order invalid. They insist that, under section 8c (17) of the act, which states:

> "The provisions . . . under section 8e applicable to orders shall be applicable to amendments to orders: . . ."

as a condition precedent to the validation of any amended order, it must contain a specific finding and proclamation as to the unavailability of the pre-war base period statistics. I think that the construction urged by the defendants is too narrow and technical. When the Secretary promulgated Amended Order No. 4, he ratified and affirmed the original "findings made upon the evidence introduced at the hearings on said order".

Plainly, he intended to ratify every finding that had been made in promulgating his original order save only as they might conflict with the findings of the amended Order. (See paragraph 15 of the master's report.) A fair reading of the amended Order would warrant the conclusion that he affirmed and ratified his finding as to the unavailability of statistics for the pre-war period. This is sufficient compliance with Section 8e of the Act. I therefore rule that the amended Order is not invalid on this ground.

As further matters of defense, the defendants attack the adminis-

tration of the Order. The requests for rulings raise questions of twenty or more allegedly invalid acts of the administrator. Some of these are trivial. One of the more important allegations is that in his computations, the administrator has included milk sold to handlers by producers not having a certificate of registration issued by the Commonwealth of Massachusetts. The Order defines a producers as

> "any person . . . who produces milk in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area."

The master has found that, as a practical matter, it was impossible from the records available to the administrator to apply the rigid test urged by these defendants. The test that the administrator applied was whether the country plant to which the milk was delivered by the producer was approved for the shipment of milk into the marketing area by one or more of the towns and cities in the area. I consider this to have been a practical and satisfactory compliance with the Order.

Other bases for alleged errors by the administrator are the erroneous inclusion of milk which should have been excluded, and the erroneous exclusion of milk which should have been included. In some instances, the administrator has, as the master found, erroneously included or excluded milk from his computations. But, the Act anticipates that the marketing administrator would not be infallible, and authorizes the promulgation of Article VII, Section 2 and Section 3 of the Order, which provides for the establishment of a cash reserve fund to be utilized for the correction of errors. The errors detected by the administrator, or called to his attention, have been corrected insofar as the reports before him have enabled him to do so. (See paragraphs 184 and 185 of the master's report.)

The other alleged errors, if proven to be such, may be corrected in the recomputation which is referred to later herein. They do not go to the merits of the validity of the Act or to the Order, and are not so serious in their nature as to warrant denial of the plaintiffs' claim for relief.

In passing upon a like attack upon a similar statute in *Milk Control Board* v. *Crescent Creamery, supra,* referring to the details of operation of an equalization pool, the court said, at page 590: "They are complicated, and involve adjustments to equalize differences between the tentative or announced 'blended price' and the afterward determined 'blended price'. Delinquencies in payments of assessments to the pool also affect the 'blended price', but there are compensating adjustments when the delinquencies are paid." As in that case, I am satisfied that the method and means adopted by the administrator to effect the legislative intent do so with a sufficient degree of exactness to satisfy the constitutional requirements. Obviously, in effectuating the policy and purpose of the act much of the detail work must be left to the person charged with the administration. It would be impossible for either the Congress or the Secretary of Agriculture to prescribe rules and regulations that would encompass every situation that can possibly be encountered by the administrator. He has shown a wholesome and wholehearted willingness to effectuate the intent of Congress without losing sight of or sacrificing any rights that these defendants might have under the Constitution or any law.

If this decision is ultimately sustained, a recomputation of the blended price for every period subsequent to August 1, 1937, will be necessary. Inasmuch as the ultimate blended price of any computation will be dependent upon the amount of Class II milk included in the computation, (see paragraph 189 of the master's report) it will be necessary, before such recomputation is made, that the milk administrator receive reports from all who are bound to comply with the provisions of the Order. After such reports have been received from all handlers a new blended price should be determined, using the same class prices that were used in making the original computation for each period, and using the same method of computation.

There has been a widespread violation of the Act and Order, and only a comparative few of the handlers have made the payments provided by the Act. These defendants have paid into court over $2,500,000. The condition of the industry under the circumstances is so chaotic that this court should do everything possible to obtain

a decision by an appellate court on the real questions involved without unnecessary delay. The constitutionality of the Act, the validity of the Order, and the decision on the question of a mandatory injunction to compel compliance with it, are the vital questions to be finally settled. Ordinarily an equity decree should be an all inclusive decision of the questions that have been raised so that the relief granted will be precise, definite, and comprehensive. In this case it would call for a complete adjudication of the exact amounts owed by each defendant. To allow the final decision on the real questions to be delayed for the period of time that would be necessary to make the recomputation, either administratively or through the court, and to subject the parties to the incidental expense, would operate to the disadvantage of every person concerned in the case, and possibly to the general public.

I anticipate that if this decision is affirmed in the appellate court the case will be returned to this court for disposition of the question of the recomputation. In the event, however, that it is ruled that the Act is unconstitutional or the order is invalid, the matter is then ended without need for it.

The plaintiffs are entitled to the injunctions prayed for in the third and fourth paragraphs of their bill, with the understanding on the part of the court that a recomputation is to be made for every period commencing with August 1, 1937, as soon as practicable after a final decision by the appellate courts on the questions above decided.

A somewhat troublesome situation is presented in the status of the two cents per hundredweight "marketing service fee" deducted under Article IX of the Order from the blended price due the producers and paid into court. This charge is for a service to be currently performed by the administrator for the benefit of producers. The master has found that it is now impossible for the administrator to provide the current service for the periods for which he has not received the charge. (See paragraph 117 of the master's report.) Under the supersedeas of the Circuit Court the "marketing service fee" was ordered to be paid into the hands of the clerk of this court. Obviously, the administrator has been powerless to provide the des-

ignated service to the producers. Under the circumstances, it would seem equitable to redistribute that "marketing service fee" to the producers from whom it was withheld by the handlers and paid into court. When and if an appellate court determines that the "marketing service fee" is a proper charge, and should be paid to the marketing administrator, he will then be in a position to render the service and the charge should be exacted. The funds that are paid in the meantime, constituting this service charge, should be turned over to the marketing administrator for distribution to the producers from whom the money has been withheld.

The defendants' joint requests for conclusions of law are denied, except insofar as they are consistent with the above. Request No. 19 has been waived.

INDIVIDUAL DEFENDANTS.

Green Valley Creamery, Inc.

In addition to all of the contentions considered above, this defendant asserts that it is not engaged in interstate commerce as that term is defined in the act and is not subject to the regulation provided in the Order. This contention is untenable. While it is quite true that the Green Valley Creamery, Inc., sells its milk to the Stuart Milk Company in Vermont, nevertheless, the facts described by the master in paragraphs 300 to 308 clearly show that the transaction is a questionable one or a "wash" sale. The same Howard B. Parker dominates both corporations, determines the price that the Stuart Milk Company will pay for the milk, and determines what price the Green Valley Creamery, Inc., will receive for the milk. Assuming for the purpose of the defendant's contention, however, that the sale is a bona fide sale, it cannot be urged by the defendant that at the time of the sale by the Green Valley Creamery, Inc., to the Stuart Milk Company that the Green Valley Creamery, Inc., did not have definite knowledge that the commodity being sold was to be sold for transportation in the current of interstate commerce. The contention of the defendant is overruled. See *Shreveport case*, 234 U. S. 342, and *Currin, et al.* v. *Wallace, et al.*, decided by the Supreme Court of the United States on January 30, 1939. The defendant's request for a contrary conclusion of law is denied.

A. J. Robinson.

The master has found that the defendant is a handler of milk as defined in the Order, and receives milk from producers at its plant at Starksboro, Vermont. All of the milk purchased by the defendant from the producers is subsequently distributed and sold in the marketing area. There is no question that the milk which the defendant handles is later a part of the flow of interstate commerce, and if the defendant contends that the transaction in which he engages is purely an intrastate transaction, it still directly burdens and affects the flow of interstate commerce, and is therefore subject to regulation by the Congress. See *Green Valley Creamery, Inc., supra,* and cases there cited. The defendant's requests A and B are denied.

A. J. McNeil & Sons.

The master has found that this defendant is a handler as defined in the Order. It purchases milk, however, not from producers, but from handlers. (See paragraph 314 of the master's report.) This milk is sold and distributed in the marketing area. While the defendant makes no purchases from producers, and is therefore not subject to payment of the blended price, it, nevertheless, is engaged in an activity over which the Congress may validly exercise its authority. It is therefore subject to compliance with the Act and Order so far as it is applicable. The defendant's request to the effect that the defendant is not indebted to the marketing administrator is allowed on the facts disclosed in the master's report. It is, however, subject to the injunctive relief sought by the plaintiffs.

The Whiting Milk Company.

Although the Whiting Milk Company is one of the largest handlers of milk in the area, it raises the intrastate character of certain of its activities as a reason for denying relief to the plaintiffs, at least insofar as these intrastate activities are concerned. Paragraphs 256 and 257 of the master's report disclose that this defendant purchases milk from producers in Massachusetts for distribution wholly in Massachusetts, and that the processing of the milk occurs separate and apart from the processing of other milk purchased from outside

of the state. It is delivered to designated institutions in the Commonwealth of Massachusetts. The surplus not needed for the institutional sale, thereafter becomes commingled with other out of state milk. The defendant contends that this milk wholly raised, processed, and sold within the State of Massachusetts is not subject to regulation by the Congress. The master has found (paragraph 97) that the introduction of as little as 2000 extra quarts of milk into the marketing area might affect the price of milk within the area. There was evidence before him that as little as a carload of milk would drop the wholesale price in Boston as much as 1 cent per day. Clearly, then, it cannot be denied that the milk wholly raised, processed, and sold in Massachusetts does not have a direct effect or burden on the marketing of interstate commerce milk. In *Currin, et al.* v. *Wallace, et al., supra,* the court stated: "The fact that intrastate and interstate transactions are commingled on the tobacco market does not frustrate or restrict the congressional power to protect and control what is committed to its own care." Citing the *Shreveport case, supra,* the court stated: "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule." The receipt and handling of the milk by this defendant in the Commonwealth of Massachusetts directly affects interstate commerce, and is clearly and inextricably related with the interstate commerce in milk transactions carried on by the said defendant. It is readily seen that the regulation of interstate commerce in milk cannot be effected without the regulation of the milk in question.

The Intervenors.

One producer was allowed to intervene in the Hood action, and another in the Whiting action, on their assertion that they had a real and genuine interest in the proceedings before the court. Their principal claim of interest is that were it not for the Act and Order they would be receiving more money for their product than the blended price, and they point to certain plant notices that were posted by these two defendants after the institution of these suits.

The notices proclaimed that a price higher than the blended price would be paid to the producers if the defendants were not compelled to comply with the Act and Order. The intervenors allege that the operation of the Act and Order deprives them of this increase over the blended price and is violative of the Fifth Amendment to the Constitution. The short answer to these contentions is that the blended price is but a minimum that the handler must pay to the producer, and there is nothing in the Act or the Order that prohibits the defendants from paying the higher price to the intervenors. It is further to be noted that the plant notices do not constitute such a contract as would enable these intervenors to recover the higher price from the defendants, if the defendants abandoned this litigation. The most that the intervenors have is a contingent interest in the excess over the blended price dependent upon the uncontitutionality of the Act or the invalidity of the Order. Such interest blossoms into a right, if at all, only after the Act has been declared unconstitutional or the Order illegal. Plainly, neither the Act nor the Order constitute a taking of property without due process of law.

Requests for conclusions of law by the intervenors are denied, except insofar as they are consistent with the above.

After the money paid into court has been released to the marketing administrator, these intervenors will be entitled to receive from him a payment, to the extent of moneys deducted from the blended price due them, and paid into court for marketing service fees under Article IX, as amended.

A decree may be prepared in accordance with the above.

SUPPLEMENTAL OPINION.

February 27, 1939.

SWEENEY, J. At the request of counsel for the plaintiffs, the following is added to the opinion which was published on February 23, 1939:

Statements of fact above are intended as findings of fact, and statements of legal conclusions, as rulings of law, in accordance

with Rule 52 of the Federal Rules of Civil Procedure, 28 USCA. following section 723c.

All of the material facts in the case are contained in the master's report. Insofar as I have dealt with questions of law, my statements in the opinion shall be regarded as conclusions of law for the purpose of the record.

CLERK'S CERTIFICATE AS TO PAYMENT OF MONEY BY H. P. HOOD & SONS, INC., INTO THE REGISTRY OF THE COURT.

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the ledger of this office shows that $1,412,280.83 has been paid into court by H. P. Hood & Sons, Inc., as of February 10, 1939, in the cause in said District Court entitled,

No. 4519, Equity,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, Secretary of Agriculture, Plaintiffs,

v.

H. P. HOOD & SONS, Inc., et al., Defendants,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said District, this fourteenth day of March, A. D. 1939.

[SEAL] JAMES S. ALLEN, *Clerk.*

CLERK'S CERTIFICATE AS TO PAYMENT OF MONEY BY NOBLE'S MILK COMPANY INTO THE REGISTRY OF THE COURT.

DISTRICT COURT OF THE UNITED STATES.
District of Massachusetts.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the ledger of this office shows that $152,190.34 has been paid into court by Noble's

Milk Company as of February 10, 1939, in the cause in said District Court entitled,

No. 4519, Equity,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, Secretary of Agriculture, Plaintiffs,

v.

H. P. HOOD & SONS, Inc., et al., Defendants,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said District, this fourteenth day of March, A. D. 1939.

[SEAL] JAMES S. ALLEN, *Clerk.*

DEFENDANTS' NOTICE OF APPEAL.

[Filed March 9, 1939.]

Notice is hereby given that H. P. Hood & Sons, Inc., and Noble's Milk Company, defendants above named, hereby appeal to the Circuit Court of Appeals for the First Circuit from the order and decree of this court entered in the above entitled cause on March 9, 1939.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
Solicitors for H. P. HOOD & SONS, INC.,
and NOBLE'S MILK COMPANY.

Appeal bond waived.

J. C. WILSON,
Special Asst. to the Attorney General.

INTERVENOR'S NOTICE OF APPEAL.

[Filed March 9, 1939.]

Notice is hereby given that E. Frank Branon, intervenor in the above-entitled cause, hereby appeals to the Circuit Court of Appeals

for the First Circuit from the order and decree of this court entered in the above-entitled cause on March 9, 1939.

EDWARD L. MERRILL,
MERRILL & MERRILL,
Solicitors for E. FRANK BRANON.

Appeal bond waived.

J. C. WILSON,
Special Asst. to the Attorney General.

Also on the said ninth day of March, A. D. 1939, an application for supersedeas pending appeal is filed by H. P. Hood & Sons, Inc., and Noble's Milk Company and the following Order for Supersedeas is entered:

ORDER FOR SUPERSEDEAS.
March 9, 1939.

In the above-entitled cause it is ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of the final decree entered on March 9, 1939 pending the final decision on the appeal therefrom in so far as it commands and directs and otherwise requires the defendants-appellants H. P. Hood & Sons, Inc. and Noble's Milk Company to pay to the market administrator appointed under Order No. 4 as amended all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended on July 27, 1937, excepting from this order of supersedeas all payments now due or to become due under Article X, Section 1, of the aforesaid amended order, and also staying and superseding the operation of said final decree in so far as it commands, directs and otherwise requires the clerk of this court to pay to the said market administrator the sums paid into the registry of this court by the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, by reason of the bills rendered by the said market administrator and also staying and superseding the operation of said final decree in so far as it directs and otherwise requires the market administrator to recompute the blended price for the several delivery periods from August 1, 1937 to and including January

15, 1939, all upon condition that the amounts now due and those becoming due from time to time from the said defendants under the provisions of Order No. 4 as amended on July 28, 1937 shall be paid into the registry of the District Court to be held pending the final determination of the above-entitled case on appeal and subject to the further order of this court.

GEORGE C. SWEENEY,
United States District Judge.

ORDER TO TRANSMIT ORIGINAL PAPERS AND AS TO PRINTING.
March 10, 1939.

This cause came on to be heard upon motion of the defendants for an order under rule 75 (i) of this court and rule 36, paragraph 9, of the United States Circuit Court of Appeals for the First Circuit to cause to be transmitted and returned certain original papers in said cause, and thereupon, the plaintiffs assenting thereto and upon consideration thereof, it is ordered:

1. That the original papers mentioned in said motion, to wit:

(a) Appendices A and B to the report of the special master,

(b) The exhibits appended to the report of the special master and numbered Exhibit 11-11 l, inclusive, 12-12 e, inclusive, and Exhibit No. 19,

be safely kept and transmitted by the clerk of this court to the clerk of the United States Circuit Court of Appeals for the First Circuit to be safely kept by said clerk for the use of said Circuit Court of Appeals in consideration of said cause on appeal and thereafter to be returned by him to the clerk of this court.

2. That is shall be unnecessary for the appellants to print as part of the printed record on appeal any of the appendices and exhibits specified in paragraph 1 hereof.

Entered as the order of this court on the day of March, 1939.

JAMES S. ALLEN, *Clerk.*

Enter. 3/10/39.
GEORGE C. SWEENEY,
District Judge

STIPULATION WITH RESPECT TO THE MARKETING AGREEMENT.

[Filed February 24, 1937.]

Whereas the plaintiff Secretary of Agriculture and the defendants H. P. Hood & Sons, Inc., and Noble's Milk Company and certain other handlers have this date simultaneously with the execution hereof entered into a marketing agreement relating to the handling of milk in the so-called Greater Boston Marketing Area; and

Whereas said marketing agreement and such order as the Secretary may issue in connection therewith become effective on the sixteenth day of January, 1939; and

Whereas on and after the effective date of said marketing agreement and said order in connection therewith the plaintiffs expect and desire compliance by the defendants with the terms of said marketing agreement rather than with the terms of Order No. 4 as heretofore amended; and

Whereas all parties desire to reserve all rights and claims which they are asserting in the present suit, and desire an adjudication by the court thereon; and furthermore to reserve all rights and claims which they may hereafter desire to assert in any other litigation to which any party hereto may be a party; and

Whereas the defendants have made payments of substantial sums into the registry of the court and to the market administrator in compliance with the order of this court as superseded by order of the Circuit Court of Appeals for the First Circuit, and all parties have expressly reserved the right to make claim thereto and therefor;

Now therefore it is hereby stipulated and agreed by and between the parties as follows:

1. The signing of said marketing agreement by the plaintiff Secretary of Agriculture and by the defendants H. P. Hood & Sons, Inc., and Noble's Milk Company or compliance with the terms thereof or with any order promulgated by the said Secretary in conjunction therewith or any act or acts done or taken pursuant thereto by any party shall not be deemed to be an admission or denial by any such party of the validity or invalidity of the Agricultural Marketing Agreement Act of 1937 or of Order No. 4 as heretofore, now

or hereafter amended or of any other order hereafter promulgated under said Act or of the legality or illegality of any act or acts of the said Secretary or of the Federal Market administrator or of the defendants heretofore or hereafter done or taken pursuant thereto or as a result thereof, or be deemed an admission or denial of any fact or facts or points of law now or hereafter raised or asserted in this or any other suit to which any party hereto may be a party, whether or not relating to the validity of the said Act or Order or of any other order promulgated under said Act or to any action, administrative or otherwise, now or hereafter taken pursuant thereto.

2. The signing of said marketing agreement by the defendants or by the plaintiff Secretary of Agriculture or compliance with the terms thereof or with any order promulgated by the said Secretary in conjunction therewith or any act or acts now or hereafter done or taken pursuant thereto by any party shall not be construed or held in any manner whatever to constitute a waiver of or estoppel to assert any or all of their respective rights in this or any other suit to which any party hereto may be a party, but shall be without prejudice to any party.

3. All parties hereby severally reserve their respective rights to assert in this suit or in any other litigation or proceedings to which any party hereto may be a party the validity or invalidity of the Agricultural Marketing Agreement Act of 1937, of Order No. 4 as heretofore, now or hereafter amended, of any other Order hereafter promulgated under said Act and of the administration thereof.

4. All parties severally reserve all their respective rights, if any, in and to the funds now on deposit or hereafter deposited in the registry of this court in connection with this suit.

5. The defendant reserves the right to collect from whomever may be liable therefor any amounts that have been or may be paid by it under Order No. 4 as heretofore amended.

6. The rights, duties and obligations assumed under the terms of

the said marketing agreement are in no wise affected by this stipulation.

HUGH B. COX,
J. C. WILSON,
THURMAN ARNOLD,
Counsel for Plaintiffs.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
Counsel for Defendant

STATEMENT OF ERRORS BY H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY.

[Filed March 13, 1939.]

Come now H. P. Hood & Sons, Inc. and Noble's Milk Company, defendants-appellants in the above-entitled cause and file the following statement of the points upon which they will rely in the prosecution of their appeal to the United States Circuit Court of Appeals for the First Circuit, taken from the judgment and decree of the District Court of the United States for the District of Massachusetts entered on the ninth day of March, 1939 in the above-entitled case.

1. The court erred in entering a decree permanently enjoining the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company from violating, and commanding and directing the said defendants to comply with, the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937.

2. The court erred in entering a decree directing the clerk of the District Court to pay to the market administrator for the Greater Boston Marketing Area the monies deposited in the registry of the District Court in compliance with the interlocutory decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order of the Circuit Court of Appeals for the First Circuit entered on June 24, 1938 (97 F. (2d) 677).

3. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 establishes sufficient standards to guide the Secretary of Agriculture in the exercise of the powers delegated to him and does not unconstitutionally delegate to the Secretary of

Agriculture the legislative power conferred upon the Congress in Article I, Section 1 and Section 8 of the Constitution.

4. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 was a valid exercise of the power to regulate interstate commerce.

5. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 as applied by Order No. 4 as amended does not deprive the defendants of their property without due process of law and without just compensation in violation of the Fifth Amendment.

6. The court erred in ruling that Sections 8c (5) (A), 8c (5) (B) (ii) and 8c (5) (C) of the Agricultural Marketing Agreement Act of 1937, as applied by Article IV, Article VII and Article VIII, Section 1, paragraph 3 of Order No. 4 as amended, are a valid exercise of the power to regulate interstate commerce and do not deprive the defendants of their property without due process of law and without just compensation in violation of the Fifth Amendment.

7. That the court erred in ruling that the amendments of July 28, 1937 to Order No. 4, for the purposes of which the Secretary of Agriculture used the post-war instead of the pre-war base period, were validly issued although the Secretary did not make in connection with their issuance the express finding and proclamation which is required by Sections 8c (17) and 8e of the Act.

8. The court erred in ruling that the amendments of July 27, 1937 to Order No. 4 must be considered as validly issued in accordance with the Agricultural Marketing Ageement Act of 1937 although the determination of the Secretary of Agriculture required by Section 8(c)9 of the Act,—that the proposed amendments were approved by more than two-thirds of the producers producing milk or its products for the sale in the marketing area—was based solely upon a referendum conducted contrary to Sections 8c (9), 8c (12) and 8c (19) of the Act in the following respects:

(a) a large number of producers who delivered their milk to stations shipping only cream to the Marketing Area in the

representative period designated by the Secretary of Agriculture were not permitted to vote in said referendum whereas the votes of other producers who delivered their milk to stations shipping only cream into the marketing area in such period were counted in said referendum,

(b) votes of producers who delivered their milk to plants shipping less than 50 percent of their total milk receipts to the marketing area in said representative period were counted,

(c) the votes of all the members of New England Dairies, Inc. and of New England Milk Producers Association were counted in favor of said amendments solely on the basis of a ballot cast by the board of directors of each such organization,

(d) the votes of a substantial number of farmers who did not have certificates of registration issued pursuant to chapter 94, Sections 16A–16C of the General Laws of Massachusetts were counted.

9. The court erred in ruling that Order No. 4 as amended on July 27, 1937 contains no other terms than those authorized by the Agricultural Marketing Agreement Act of 1937 and in failing to rule that the provisions of Articles IV, V, VII and VIII of the said order are terms forbidden by said Act to be included in orders, in so far as they permit and require the market administrator to include in the equalization pool milk "received" but not "purchased" from their members by cooperative associations of producers qualified under the Capper-Volstead Act.

10. The court erred in ruling that the market administrator acted in accordance with the terms of Order No. 4 as amended in including, in the computation of the blended price, milk delivered by farmers to a country plant approved by one or more of the towns in the marketing area for shipment of milk into the Area irrespective of whether such farmers had certificates of registration issued pursuant to Sections 16A–16C of Chapter 94 of the General Laws of Massachusetts.

Wherefore the said defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, pray that the decree in said cause may be

reversed, and for such other and further relief as may be just in the premises.

CHARLES P. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
Solicitors for H. P. HOOD & SONS, INC. *and* NOBLE'S MILK COMPANY.

STATEMENT OF ERRORS BY E. FRANK BRANON, INTERVENOR.

[Filed March 13, 1939.]

Comes now E. Frank Branon, intervenor in the above-entitled cause, and files the following statement of the points upon which he will rely in the prosecution of his appeal to the United States Circuit Court of Appeals for the First Circuit, taken from the judgment and decree of the District Court of the United States for the District of Massachusetts entered on the ninth day of March, 1939 in the above-entitled case.

1. The court erred in entering a decree denying the prayer for relief contained in the intervenor's answer.

2. The court erred in entering a decree permanently enjoining the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company from violating and commanding and directing the said defendants to comply with, the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937.

3. The court erred in entering a decree directing the clerk of the District Court to pay to the market administrator for the Greater Boston Marketing Area the monies deposited in the registry of the District Court in compliance with the interlocutory decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order of the Circuit Court of Appeals for the First Circuit, entered on June 24, 1938 (97 F.(2d) 677).

4. The court erred in ruling that the operation of the Agricultural Marketing Agreement Act of 1937 and Order No. 4, as amended, does not decrease the price which the intervenor receives for milk sold to the defendant, H. P. Hood & Sons, Inc.

5. The court erred in failing to rule that the Agricultural Marketing Agreement Act of 1937 as applied in Amended Order No. 4,

operates to take the property of the intervenor in violation of the Fifth Amendment by diminishing the market value of the milk produced by said intervenor.

6. The court erred in ruling that Sections 8c (5) (A), 8c (5) (B) (ii) and 8c (5) (C) of the Agricultural Marketing Agreement Act of 1937, as applied by Article IV, Article VII and Article VIII, Section 1, paragraph 3 of Order No. 4 as amended are a valid exercise of the power to regulate interstate commerce and do not deprive the intervenor of his property without due process of law and without just compensation in violation of the Fifth Amendment.

7. The court erred in ruling that the market administrator acted in accordance with the terms of Order No. 4 as amended in including, in the computation of the blended price, milk delivered by farmers to a country plant approved by one or more of the towns in the marketing area for shipment of milk into the area irrespective of whether such farmers had certificates of registration issued pursuant to Sections 16A–16C of Chapter 94 of the General Laws of Massachusetts.

The intervenor will also rely upon each and all the errors stated by the defendants, H. P. Hood & Sons, Inc., and Noble's Milk Company.

Wherefore the said intervenor, E. Frank Branon, prays that the decree in said cause may be reversed, and for such other and further relief as may be just in the premises.

EDWARD L. MERRILL,
MERRILL & MERRILL,
Solicitors for E. FRANK BRANNON, *Intervenor.*

STIPULATION AS TO THE CONTENTS OF THE RECORD ON APPEAL.

[Filed March 10, 1939.]

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective attorneys:

1. That the transcript of the record on appeal hereof shall consist of the following papers:

First amended bill of complaint (omitting Exhibit A).

Recital of hearing on the prayer for a preliminary injunction.

Petition of E. Frank Branon for leave to intervene, October 29, 1937.

Recital of order allowing intervention by E. Frank Branon.

Answer of H. P. Hood & Sons, Inc.

Answer of Noble's Milk Company.

Decree for temporary injunction.

Order for supersedeas as to H. P. Hood & Sons, Inc. by Bingham, J.

Order for supersedeas as to Noble's Milk Company by Bingham, J.

Order referring the cases to a special master.

Report of the special master (see paragraph 2 below).

Answer of the intervenor, E. Frank Branon.

Recital of supersedeas denied by District Judge.

Memorandum of the filing of the special master's report (together with a reference to the fact that it is printed in Volumes II and III of the Record on Appeal).

Recital of the hearing on the master's report (together with a statement that no additional evidence was offered).

Plaintiffs' proposed conclusions of law.

Defendants' requested conclusions of law (omitting the discussion under each numbered request).

Requests for conclusions of law by E. Frank Branon, January 28, 1939.

Defendants' "Waiver" on certain issues filed on March 9, 1939.

Recital of order joining Samuel W. Tator, market administrator, as a plaintiff, March 9, 1939.

Final decree.

Memorandum of District Court, *re* preliminary injunction November 19, 1937.

Supplementary findings of fact by District Court, November 24, 1937.

Opinion and order of the Circuit Court of Appeals Continuing the superseadeas issued by Bingham, J., June 24, 1938.

Opinion of the District Court, February 23, 1939.

Supplemental opinion, February 27, 1939.

Certificates of the clerk of the District Court showing the amount of the payments in the registry in compliance with the temporary injunction and orders for supersedeas.

Defendants' notice of appeal.

Intervenor's notice of appeal.

Order for supersedeas, March 9, 1939.

Order as to the transmission of certain original papers and documents and as to printing.

Stipulation filed in the District Court with respect to the marketing agreement effective January 16, 1939.

Assignments of error of defendant and of intervenor.

Clerk's certificate.

Stipulation of the contents of the record on appeal.

2. That in printing the record on appeal the papers listed in paragraph 1 hereof, with the exception of the report of the special master, shall be printed as Volume I of said record on appeal.

3. That the copies of the printed report of the special master, which have already been printed by the parties to the above-entitled cause, bound with appropriate covers shall constitute Volumes II and III of the printed record on appeal, except so far as the District Court has ordered that certain appendices and exhibits attached to said Report need not be included in the printed record on appeal but shall be transmitted to the United States Circuit Court of Appeals for the First Circuit as original exhibits.

H. B. COX,
J. C. WILSON,
Counsel for the Plaintiffs,

CHARLES P. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,
Counsel for the Defendants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, ss.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the three volumes, entitled as follows:

Volume I., Pleadings;
Volume II., Report of Special Master
(Findings of Facts)
Volume III., Report of Special Master
(Exhibits Appended)

constitute the transcript of the record on the appeals of the defendants, including true copies of such proofs, entries and papers on file as have been designated by the stipulation of parties as to the contents of the record on appeal, in the cause entitled

No. 4519, EQUITY DOCKET,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, PLAINTIFFS,

v.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of March, A. D. 1939.

[SEAL] JAMES S. ALLEN, *Clerk.*

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the three volumes, entitled as follows:

Volume I., Pleadings;
Volume II., Report of Special Master (Findings of Fact);
Volume III., Report of Special Master (Exhibits Appended)

this certificate being attached to each of said three volumes, contain and are a true copy of the record and all proceedings to, and including, March 22, 1939, in the cause in said court numbered and entitled, No. 3445.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS, APPELLANTS,

v.

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of March, A. D. 1939.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 772

ORDER ALLOWING CERTIORARI—Filed March 27, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is assigned for argument immediately following No. 771.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 865

ORDER ALLOWING CERTIORARI—Filed April 17, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is consolidated with No. 772 for the purpose of argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.